



CALIFORNIA
DEPARTMENT OF
EDUCATION

1430 N STREET
SACRAMENTO, CA
95814-5901

JACK O'CONNELL

State Superintendent of
Public Instruction

PHONE: (916) 319-0800

June 9, 2005

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter dated May 27, 2005, the California Department of Education is submitting the following documentation related to my testimony to the Commission on May 26, 2005 during its reconsideration of the Standardized Testing and Reporting (STAR) program test claim (Case No. 04-RL-9723-01). In that testimony I stated that the Superintendent of Public Instruction, the California Department of Education, and the State Board of Education view the No Child Left Behind Act (Public Law 107-110) as imposing a federal mandate on the State of California, and that the U.S. Department of Education uses sanctions, fines, and penalties (or the threat thereof) to ensure that states comply with the requirements of this federal law, including the testing requirements that California meets using the STAR system.

In response to a request from the Commission, I am including a number of documents showing that penalties have been assessed to other states for issues of non-compliance and that the threat of such penalties has been directed at California. Included are:

- Declaration of Gerald Shelton
- USDE letter dated October 9, 2003 — Cheri Pierson Yecke
- Texas Education Agency Press Release dated April 25, 2005
- USDE letter dated January 19, 2005 — Shirley Neeley
- Texas Education Agency letter dated February 10, 2005 — Margaret Spellings
- USDE letter dated April 22, 2005 — Shirley Neeley
- USDE letter dated December 10, 2004 — Mr. Jack O'Connell and Ms. Ruth E. Green
- USDE letter dated January 19, 2005 — Chief State School Officer
- CDE and SBE letter dated December 9, 2004 — Ray Simon
- USDE letter dated April 4, 2005 — Ms. Ruth E. Green and Mr. Jack O'Connell

Thank you for the opportunity to testify and to provide this additional evidence. If you have any questions regarding this letter you may contact me at (916) 445-0541 or Don Killmer, Education Fiscal Services Consultant at (916) 323-2591.

Respectfully,

Gerald C. Shelton, Director
Fiscal and Administrative Services Division

Enclosures:

DECLARATION OF GERALD SHELTON

I, GERALD C. SHELTON, hereby declare as follows:

1. I submit this declaration in support of my testimony to the Commission on State Mandates during the Commission's reconsideration of the Standardized Testing and Reporting (STAR) program test claim (Case No. 04-RL-9723-01).
2. I am currently the Director of the Fiscal and Administrative Services Division in the California Department of Education and function as the chief fiscal officer of that Department. I have held that position since September 2002. Prior to that date, I served as the Administrator of Fiscal Policy Office in the California Department of Education, coordinating the Department's fiscal role in the development of the State budget through three annual budget cycles. For more than five years I have also had the responsibility for developing the Department's fiscal analysis of and reaction to issues related to state mandated costs, including cases being heard by the Commission on State Mandates. I have been employed by the California Department of Education since 1995. I received my Undergraduate and Graduate degrees from the University of California, Davis, in Economics with a specialization in the field of Public Finance. I taught in this field, as well as other areas of Economics and Public Policy, as a full-time faculty member in the Department of Economics at the California State University, Sacramento from 1980 through 1995.
3. On May 26, 2005, during the Commission's reconsideration of the Standardized Testing and Reporting (STAR) program test claim, I testified on behalf of the Superintendent of Public Instruction, the California Department of Education, and the State Board of Education that, as the organizational entities charged with administering programs under the federal No Child Left Behind Act (Public Law 107-110; NCLB), we see that NCLB clearly imposes a federal mandate on the State of California. We also know from direct experience and the experience of other states that the U.S. Department of Education uses sanctions, fines, and penalties (or the threat thereof) to compel and

coerce states into full compliance with the requirements of this federal law, including the testing requirements that California meets using the STAR system.

4. In my testimony I also stated that federal state-level grants to California under NCLB total more than \$3 Billion, an amount equaling approximately 7.6% of our state's K-12 education expenditures. The loss of this amount of funding would be devastating to K-12 education in California, especially when it is considered that a high proportion of these funds are targeted at schools and districts with the least amount of available non-federal resources and with student populations whose education presents the highest level of challenge and cost. Clearly this substantial loss of funds would significantly impact students throughout California.

5. In order to receive the more than \$3 Billion under NCLB, California is required to implement a statewide accountability system that is effective in every district in the State and that ensures all public elementary and secondary schools make adequate yearly progress in meeting academic goals as defined by NCLB. STAR is a primary component of this accountability system.

6. The experiences of California and of other states show that non-compliance with the requirements of NCLB leads to fiscal penalties imposed or the threat of such fiscal penalties by the U.S. Department of Education (USDE). Those amounts threatened in written or oral form have ranged from fines taken against state NCLB administrative funding to the full loss of NCLB grant funding.

7. In October of 2003 the USDE informed the Minnesota Department of Education (MDE) that ten percent of the MDE's Title I Part A administrative funds (\$112,964) would be withheld from the MDE as a result of Minnesota's failure to use current assessment data for middle and high schools in its computation of Adequate Yearly Progress (AYP) for those schools. The USDE also informed the MDE that it would withhold ten percent of the MDE's Title I Part A administrative funds for each subsequent year that Minnesota failed to correct this issue of non-compliance.

8. In January of 2005 the USDE informed the Texas Education Agency (TEA) that four percent of the TEA's Title I Part A administrative funds (\$444,282) would be withheld from the TEA as a result of Texas' failure to use report AYP for its schools prior to the start of the school year. The USDE also informed the TEA that it would withhold funds "...until the Secretary determines that the State has fulfilled those requirements." In February of 2005 the TEA asked for reconsideration of this penalty; however, the USDE upheld the penalty in April of 2005. At that time the USDE stated that, "...TEA's late identification of schools is a violation of the law for which TEA must be held accountable."

9. In December of 2004 the USDE provided the California Department of Education (CDE) with a summary of findings resulting from USDE's review of CDE's implementation of various NCLB programs. That review found that, "The CDE did not identify local school districts in need of improvement in a manner that is consistent with the statute." The USDE requested further information from the CDE related to this issue and stated, "Moreover, ED [USDE] reserves its option to take further administrative actions, including the withholding of funds. If ED decides to take such actions, it will notify CDE of those actions in a separate document." The CDE in later discussions was compelled to accept USDE's demands on this issue so as to avoid the threatened fiscal sanctions.

10. In a January 2005 letter from USDE to all Chief State School Officers, including State Superintendent of Public Instruction Jack O'Connell, USDE reminded states of the requirements of NCLB in the area of standards and assessment. Near the conclusion of this letter USDE states, "Further, if a State's standards and assessment system does not have *Full Approval* or *Full Approval with Recommendations* by July 1, 2006, we will place conditions on the receipt of fiscal year 2006 Title I funding. These conditions will continue until *Full Approval* or *Full Approval with Recommendations* is attained."


11. In April of 2005 the USDE responded to a December 2004 request made jointly by the CDE and the State Board of Education regarding a partial waiver of the NCLB requirement to annually assess English language learners in grades K-1. This partial waiver was requested because of technical concerns related to testing such young students and with an eye toward reducing the testing burden on students and local education agencies. The USDE rejected this request, thus forcing the state to proceed with the implementation of a requirement that it would have otherwise chosen not to implement.

12. All of these experiences reflect the environment of compulsion and coercion in which state agencies administer the programs and grants that make up the No Child Left Behind Act. There is little or no flexibility allowed by the federal government in the implementation of the programs and adherence to the requirements of NCLB, any acts of non-compliance are met with significant fiscal sanction or the threat thereof, and choosing as a state to refuse to implement the law in its entirety would have a devastating fiscal impact on our ability to educate our children. From the perspective of the Superintendent of Public Instruction, the California Department of Education, and the State Board of Education, the organizational entities charged with administering programs under the federal No Child Left Behind Act, NCLB clearly imposes a federal mandate on the State of California

13. Attached are true and correct copies of the documents reference in the above paragraphs 7, 8, 9, 10, and 11.

I declare under penalty of perjury that the foregoing is true and correct and of my own personal knowledge. If called upon to do so I could and would competently so testify.

Executed this 9th day of June 2005, at Sacramento, California.


Gerald C. Shelton



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

OCT - 9 2003



The Honorable Cheri Pierson Yecke
Commissioner of Education
Minnesota Department of Education
1500 Highway 36 West
Roseville, Minnesota 55113

Dear Commissioner Yecke:

I am writing to follow up on Secretary Paige's August 1, 2003, letter to you regarding Minnesota's compliance with Title I of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB). As you know, we have had several conversations with you and your staff to try to resolve the issues related to Minnesota's non-compliance with Section 1111(b)(2)(C)(iv) of ESEA. After providing Minnesota with an appropriate opportunity, Minnesota was not able to "show cause" as to why the Department should not withhold ten percent of Minnesota's Title I, Part A administrative funds.

In April 2003, your staff communicated to us that Minnesota would not be using 2002-2003 school year assessment data as the primary determinant of adequate yearly progress (AYP) for the middle and high school levels. Instead, Minnesota used attendance rate data for middle schools and graduation rate data for high schools as the primary means for making AYP determinations for the 2002-2003 school year.

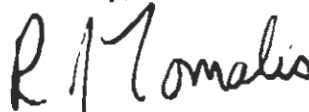
As you know, section 1111(b)(2)(C)(iv) of ESEA requires that a State's definition of AYP measure the progress of its schools based primarily on academic assessments. By not using academic assessments in reading/language arts and mathematics as the primary determinants of AYP for Minnesota's middle and high schools for the 2002-2003 school year, Minnesota is out of compliance with this requirement.

Because holding all schools and school districts accountable for making AYP is one of the fundamental principles of NCLB, we are exercising our authority under section 1111(g)(2) to withhold ten percent of Minnesota's Title I, Part A administrative funds for the 2002-2003 school year—\$112,964. The Department will also withhold ten percent of Minnesota's Title I, Part A administrative funds for each subsequent year until Minnesota, in accordance with section 1111(b)(2)(C)(iv) of ESEA, uses academic assessments as the primary determinants of AYP for Minnesota's middle and high schools. We have every reason to believe, however, that no further withholding will be necessary because Minnesota is currently undertaking efforts to ensure that middle and high school assessments administered in the 2003-2004 school year will be used as the primary determinants of AYP.

I appreciate your efforts to move forward with a strong State accountability plan that embraces the letter and spirit of the law and that will result in all students in Minnesota receiving a high

quality education. My staff and I look forward to working with Minnesota over the coming year.

Sincerely,

A handwritten signature in black ink, appearing to read "R. J. Tomalis". The signature is fluid and cursive, with the first name "R" being large and prominent, followed by a vertical line and then "J. Tomalis".

Ronald J. Tomalis
Acting Assistant Secretary



NEWS

Texas
Education
Agency

1701 NORTH CONGRESS AVENUE

AUSTIN, TEXAS 78701-1494

(512) 463-9000

PRESS RELEASE

April 25, 2005

Texas fined for late release of school transfer list; compromise on alternative assessments possible

AUSTIN – The U.S. Department of Education announced Friday evening that it was fining the Texas Education Agency \$444,282 because the state agency released information about a federal school transfer program after school began this past fall.

The fine had nothing to do with the testing of special education children or their inclusion in the Adequate Yearly Progress federal evaluation system as erroneously reported by the *Houston Chronicle* and subsequently by the *Associated Press*.

In fact, Wednesday, U.S. Secretary of Education Margaret Spellings and Texas Commissioner of Education Shirley J. Neeley had a productive and cordial meeting that focused on the use of alternative tests for special education students. Neeley said she is hopeful that the state and federal government can reach a compromise on this issue.

During that meeting, state officials were also told that Texas would be receiving a letter fining the state for the late announcement of schools that had failed to make Adequate Yearly Progress for two years. Students who attend these schools are eligible to transfer to another school. The federal No Child Left Behind law calls for parents to be notified about this transfer option before school begins.

Because USDE approved Texas' state AYP plan on July 29, which prompted a massive reprogramming of data, the state was not able to release its School Improvement list until Sept. 27. Schools were then required to notify parents of the transfer option by Sept. 30.

On Jan. 19, then Secretary of Education Rod Paige issued a letter to Neeley tentatively advising the commissioner that the department intended to withhold four percent of its federal Title I, Part A administrative funds for fiscal year 2004. Four percent equals \$444,282. TEA appealed the finding.

The USDE notified TEA by fax at 6:57 p.m. on Friday that the fine, exclusively related to the School Improvement list release, would be levied.

"We regret that this happened. The fine was initiated under different USDE leadership. We believe there was a unique set of circumstances in 2004 that affected the timing of the notification this past fall. We have pledged to issue notifications about school choice options by Aug. 15 this year," Neeley said.

Neeley also said, "TEA will make the sacrifice and absorb this fine. We'll find additional administrative efficiencies to cover this loss. Classrooms and teachers will not be harmed by this fine."

Copies of letters from USDE and TEA on this issue are attached.

Paige letter

Neeley letter

Spellings letter



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

January 19, 2005

Honorable Shirley Neeley
Commissioner of Education
Texas Education Agency
William B. Travis Building
1701 North Congress Avenue
Austin, Texas 78701-1494

Dear Commissioner Neeley:

Over the past few months, the U. S. Department of Education (Department) has been in contact with the Texas Education Agency (TEA) in an effort to resolve an issue related to TEA's compliance with Title I of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB). The specific issue of noncompliance regards TEA's fulfilling its obligations under section 1111 of Title I to provide schools and local educational agencies (LEAs) timely assessment information and adequate yearly progress (AYP) decisions in order that Title I schools and LEAs may satisfy their obligations under section 1116.

Annually assessing student achievement against challenging academic standards and holding all schools accountable for making AYP are two of the fundamental principles of NCLB. To ensure that all students reach State academic standards, it is critical that schools and LEAs receive academic achievement data and AYP determinations prior to the start of the school year so they can most quickly make the necessary changes to their instructional programs and professional development. Further, it is important for parents of students enrolled in Title I schools identified for improvement to know the AYP status of their schools prior to the start of the school year so that they can make informed decisions regarding public school choice and supplemental educational services.

As part of their State accountability plans under section 1111 of NCLB, States are required to provide decisions about AYP in time for schools to implement the required provisions under section 1116 before the beginning of the next academic year. We have learned from TEA that, although most Texas public elementary and secondary schools started the 2004-2005 school year the week of August 16, 2004, TEA did not provide Title I schools with their AYP determinations until September 27, 2004. TEA's delay in providing its Title I schools with their AYP determinations prior to the start of the school year is in violation of section 1111.

Section 1111(g)(2) of ESEA addresses the failure of a State to meet any of the requirements of section 1111 of ESEA. If a State fails to meet any of the requirements of section 1111, the Secretary may withhold funds for State administration under Title I, until the Secretary determines that the State has fulfilled those requirements.

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Accordingly, it is the Department's intent to exercise the authority under section 1111(g)(2) to withhold four percent of TEA's Title I, Part A administrative funds for fiscal year (FY) 2004. Four percent of TEA's Title I, Part A administrative funds for FY 2004 is \$444,282.

TEA has the opportunity within 10 days of receipt of this letter to show cause in writing why the Department should not withhold four percent of the State's Title I, Part A administrative funds. If TEA cannot show cause, the Department, as authorized by section 1111(g)(2) of ESEA, will withhold four percent of TEA's FY 2004 Title I, Part A administrative funds. If you have any questions about this matter, please contact Assistant Secretary Raymond Simon at 202-401-0113.

Sincerely,

A handwritten signature in black ink that reads "Rod Paige". The signature is fluid and cursive, with the first name "Rod" and last name "Paige" clearly legible.

Rod Paige



TEXAS EDUCATION AGENCY

1701 North Congress Ave. ★ Austin, Texas 78701-1494 ★ 512/463-9734 ★ FAX: 512/463-9838 ★ <http://www.tea.state.tx.us>

Shirley J. Neeley, Ed.D.
Commissioner

February 10, 2005

The Honorable Margaret Spellings
Secretary of Education
U.S. Department of Education
Federal Office Building 6
400 Maryland Avenue, SW
Washington, DC 20202

RE: Response to former Secretary of Education Rod Paige's Letter dated January 19, 2005,
concerning Withholding of Federal Funds

Dear Secretary Spellings:

This letter is in response to a letter the Texas Education Agency (TEA) received from the United States Department of Education (USDE) via United States mail on January 27, 2005. The letter informs TEA that USDE intends to withhold four percent of Texas' Title I, Part A administrative funds for fiscal year (FY) 2004 (\$444,282). The letter also states that Texas has the opportunity within 10 days of receipt of the letter to show cause in writing why USDE should not withhold the four percent of the State's Title I, Part A administrative funds. This letter provides Texas' showing as to why funds should not be withheld.

TEA strongly believes that USDE's intent to withhold funds is inappropriate because (1) the timing of Texas' School Improvement (SIP) determinations was based in large part on the late approval by USDE of the Texas Adequate Yearly Progress (AYP) Plan (as well as the late publication of related USDE policies and guidance), and (2) Texas' SIP determinations were made prior to September 30, 2004, which TEA in good faith believed was sufficient to meet USDE's requirements based on repeated communications and unique circumstances, including our efforts to align Texas' state and federal accountability determinations. Following is a chronology of the process Texas engaged in for approval of amendments to our AYP plan in 2004 and release of SIP. Given the short turn-around required by USDE to respond, staff are still researching the specific dates and details of the calendar outlined below, but the events outlined represent the facts to the best of our research and recollection.

December 9, 2003 – March 29, 2004: Final federal regulations related to use of alternative assessment results for students with disabilities in the AYP indicators (the 1% requirement) were published in the *Federal Register* on December 9, 2003. Additional policy guidance regarding the state proposals for implementing AYP was released by USDE February 4, 2004 (Title I targeted assistance schools), February 19, 2004 (English language learners), and March 29, 2004 (participation rates).

There had been no communication from USDE since April 30, so TEA contacted USDE and requested that a conference call be scheduled to identify the outstanding issues. The conference call took place June 2, 2004. USDE had determined that Texas could receive only very limited flexibility related to the new 1% requirement, and only through a compliance agreement. For USDE, the primary purpose of the conference call was to discuss the administrative process required for a compliance agreement. TEA staff pressed to discuss content of the proposed compliance agreement in relation to the AYP calculation for 2004 because we urgently needed those decisions. The majority of USDE staff involved in the conference call, with the exception of our USDE accountability contact person, was not familiar with Texas' April 1 proposal and was not prepared to discuss specific issues with the proposal. USDE staff offered to meet with TEA in conjunction with a trip to Texas in mid-June if necessary to review additional documentation; however, all relevant documentation had been included in the proposal. When the issues were still not resolved on June 18 the Commissioner of Education requested a meeting with Assistant Secretary Raymond Simon. That meeting was scheduled for July 1 in Washington, DC.

TEA requested another conference call with USDE before the July 1 meeting in hopes that issues could be resolved related to testing of students with limited English proficiency (LEP), which TEA believed were close to resolution when Texas' original AYP plan was approved in 2003. This would mean the limited time in Washington, DC could be devoted to the more difficult issues related to testing of students with disabilities. A telephone call did take place on June 25. Again, most of the USDE staff participating in the call did not demonstrate any knowledge of the April 1 proposal, or familiarity with the Texas assessment policies related to exemption of LEP students from Texas assessments. Although USDE had not conducted a review of Texas' assessment program under No Child Left Behind (NCLB) as originally planned in 2003, the conversation focused on concerns about the assessment program that had not previously been shared with TEA staff and could only be resolved through a USDE state assessment review that according to USDE staff would not occur until 2005 (NOTE: it has now been scheduled for early in 2005 (February 2005), but only at the insistence of TEA). Additional calls took place over the next week and a revised proposal related to LEP student participation and performance in the AYP calculation was drafted by TEA staff for the July 1 meeting.

July 1, 2004: On July 1, the Commissioner of Education and TEA assessment, accountability, and special education staff met with USDE staff in Washington, DC. A verbal resolution was reached regarding implementation of the new 1% regulation. The remaining question was whether TEA would submit a request for exception to the 1% cap. In a letter dated July 12, TEA informed USDE that a request for exception would not be submitted. Timing was a consideration in this decision. Developing the request would take some time and TEA would not expect an immediate response from USDE. This would further delay the AYP release for 2004. Also, a considerable research effort would be required to develop the proposal, including the requirement that we define "significant cognitive disability" on the basis of data currently available. TEA was not optimistic that Texas could successfully make the case for a higher cap, given USDE guidelines for what would be considered acceptable justification. Additionally, at the July 1 meeting TEA staff was told that the highest exception approved to date was 1.3% and Texas could not expect to receive approval for a cap higher than 1.5%. A 1.5% cap would not be enough to prevent the state and large numbers of districts and campuses from failing to meet AYP based on the design of the state assessment system. The July 12 letter also put in writing the modifications to the April 1 proposal approved verbally on July 1. The July 1 modifications differed from the original April 1 proposal on one point related to LEP students and on two points related to

Improvement requirements. Districts with campuses that would be subject to SIP only if they missed 2004 AYP were required to notify parents of SIP options before the beginning of the second semester unless they appealed by December 1. An expedited appeals process was put in place so that districts that appealed by December 1 and whose appeal was denied could notify parents prior to the second semester of the 2004-05 school year and implement SIP requirements for the second semester.

USDE's guidance on School Choice on the USDE web site was used in developing the 2004 AYP calendar (see at <http://www.ed.gov/policy/elsec/guid/schoolchoiceguid.doc>). That guidance allows for the provision of not identifying SIP status prior to the start of school in question B-5 by instructing LEAs to make choice available as quickly as possible. The guidance continues to state an example that "an LEA that receives its listing of schools identified for improvement in the fall might offer choice to students immediately or for the second semester."

September 2004: USDE contacted TEA and informed the agency that Texas' timeline of November 15, 2004, for actual SIP notification would need to be accelerated. TEA proposed notifying the 303 campuses of 2004-05 SIP status on September 30, the same date that districts and campuses were already scheduled to receive state accountability ratings. USDE responded that parent notification had to occur by September 30, 2004. TEA staff then significantly accelerated the calendar from a notification date of November 15 to a notification date of September 27—seven weeks earlier than planned. Additionally, the 199 schools designated in SIP were required to notify parents by September 30, within three days of notification by the TEA that their school was on the SIP list. Schools required to offer SIP in 2004-05 were instructed that they must continue to offer school choice and applicable SIP interventions through the end of the school year, even if they successfully appealed their preliminary 2004 AYP data.

Telephone conversations with Assistant Secretary Raymond Simon led our Agency to believe that the following actions, all of which TEA met, were necessary for compliance with 2004 SIP notifications requirements.

- 1) Notifying each school in danger of entering SIP before the beginning of the school year (August 13, 2004),
- 2) Accelerating the release of the preliminary AYP information for these campuses from November 15 to September 27,
- 3) Meeting the September 30 deadline for parent notification,
- 4) Requiring each school notified on September 27 to engage in SIP activities for the entire school year regardless of the outcome of the AYP appeals process, and
- 5) Developing a release schedule in subsequent years that will allow for parent notification of SIP status before the beginning of the school year.

The chain of facts presented above illustrates that USDE's intent to withhold funds is inappropriate. TEA submitted its request for amendments to Texas' AYP Plan by the April 1, 2004 deadline, and worked in good faith with USDE to reach resolution of those issues (proactively reaching out to USDE to spur movement on several occasions). USDE had committed to make decisions on proposed amendments within 30 days, yet USDE did not communicate final approval of Texas' AYP Plan until July 29, 2004, approximately four months later and just two weeks before USDE now expected TEA to make SIP determinations. Further, TEA instituted great efforts to make SIP determinations prior to September 30, 2004, per our original intent to align federal and state accountability determinations as was communicated at several points in the process (though shifting toward the end from making federal and state

Further, TEA questions USDE's belief that it can withhold funds under Title I of the Elementary and Secondary Education Act (ESEA), section 1111(g)(2) independent of the protections afforded recipients under the General Education Provisions Act (GEPA). In particular, we note that GEPA provides a defense of mitigating circumstances in cases where it would be unjust to compel recovery of funds based on USDE's failure to provide timely guidance. Whether directly or by analogy, this defense should apply here based on the facts described above.

Moreover, to the extent that USDE moves forward exclusively under section 1111(g)(2), we feel compelled to note that section 1111(g)(2) is applicable only to alleged violations of section 1111. Yet section 1111 requires states to release assessment data to districts; it is 1116 that requires districts to make SIP determinations. Therefore, the alleged violation raised by USDE does not technically implicate section 1111(g)(2). At the same time, nothing in this letter should be seen as waiving TEA's rights to seek redress of any USDE action under GEPA or other applicable laws.

Finally, TEA is greatly concerned about the fairness and consistency of this proposed USDE discretionary administrative action across all states, which is crucial to the appropriate enforcement of NCLB requirements.

The TEA is very willing to discuss the facts presented here and any alternatives that are available at the discretion of the secretary based on consideration of this additional information. TEA will also continue to research and catalogue all correspondence and interactions with USDE on the issues addressed above to support and/or clarify the dates and events described in this correspondence.

In conclusion, I would like to respectfully request that before any final action is taken that you or your designee meet with TEA officials to discuss the specific circumstances described in this letter.

Sincerely,

A handwritten signature in black ink, reading "Shirley J. Neeley". The signature is fluid and cursive, with the first name "Shirley" being more prominent and the last name "Neeley" following in a similar style.

Shirley J. Neeley, Ed.D.
Commissioner of Education

cc: Raymond Simon, Assistant Secretary of Education, USDE
Keri Briggs, USDE



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

April 22, 2005

Honorable Shirley Neeley
Commissioner of Education
Texas Education Agency
William B. Travis Building
1701 North Congress Avenue
Austin, Texas 78701-1494

Dear Commissioner Neeley:

I am writing to follow up on former Secretary Paige's letter of January 19, 2005, in which he notified you of his intent to withhold four percent of Texas' fiscal year 2004 State administrative funds under Title I of the Elementary and Secondary Education Act (ESEA) for failing to provide schools and school districts timely assessment information and adequate yearly progress (AYP) decisions.

The Texas Education Agency (TEA) responded on February 10, 2005, in an effort to show cause why the Department should not withhold a portion of Texas' Title I administrative funds. TEA essentially identifies the U.S. Department of Education (ED) as the cause of TEA's failure to make timely AYP decisions. In support of its position, TEA cites the timing of the approval of amendments to the Texas Accountability Plan as well as the timing of publication of related ED policies and guidance. TEA also asserts that it believed, in good faith, that notifying schools of their AYP determinations by September 30 would be sufficient to meet the statute's requirement that schools be identified before school began, which, in Texas, occurred the week of August 16-20, 2004.

After careful consideration of TEA's submission, I have concluded that TEA has not shown cause why I should not withhold four percent of Texas' Title I State administrative funds for fiscal year 2004. In its response, TEA asserts that it could not make timely AYP determinations because ED did not respond, in a timely manner, to its amendment request or provide guidance on implementing the new regulations that permit a State to hold students with the most significant cognitive disabilities to alternate achievement standards and include their proficient scores in AYP decisions, subject to a 1.0 percent cap. ED's actions, however, did not cause TEA's late identifications.

For AYP decisions based on the 2003-04 assessments, TEA submitted an amendment to its accountability plan requesting permission to "hold harmless" schools and districts that did not make AYP because of the application of the 1.0 percent cap. The TEA's proposed amendment was not consistent with the law and the regulations and something

Page 2 -- Honorable Shirley Neeley

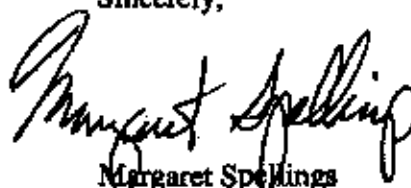
ED could not approve. Our negotiations between April and July were an effort to find a mutually agreeable solution.

At no time during those discussions was TEA led to believe that its amendment would be approved as proposed, and ED staff made clear to TEA that including the proficient scores of all students who took the alternate assessment would not be allowable. Moreover, I understand that Assistant Secretary Simon did not state that identifying schools for improvement by September 30 would be sufficient to avoid a withholding of State administrative funds.

Therefore, under section 1111(g)(2) of ESEA, I am withholding four percent of Texas' Title I State administrative funds for fiscal year 2004, which totals \$444,282. Under Texas' accountability plan, required by section 1111 of ESEA, TEA was required to provide decisions about AYP in time for schools to implement the required provisions of section 1116 before the beginning of the 2004-05 school year. TEA has not provided a sufficient justification for failing to do so.

I regret having to withhold a portion of Texas' Title I State administrative funds but I conclude that TEA's late identification of schools is a violation of the law for which TEA must be held accountable. I am heartened by TEA's recent commitment to ensure that this year's AYP decisions are timely. These actions will be important to the education of students in Texas so that no child is left behind.

Sincerely,



Margaret Spellings



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202-6192

DEC 10 2004

Mr. Jack O'Connell
Superintendent of Public Instruction
California Department of Education

Ms. Ruth E. Green
President
California State Board of Education
1430 N Street, Suite 5602
Sacramento, CA 95814

Dear Superintendent O'Connell and President Green:

During the week of September 20-24, 2004, a team from the U. S. Department of Education's (ED) Student Achievement and School Accountability Programs (SASA) reviewed the California Department of Education's (CDE) administration of the following programs authorized by the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act (NCLB): Title I, Part A; Title I, Part B, Subpart 3; and Title I, Part D. Also reviewed was Title X, Part C, Subtitle B, of the ESEA (also known as the McKinney-Vento Homeless Education Assistance Improvements Act of 2001). Enclosed is a report based upon this review.

The reauthorization of ESEA under NCLB brought a major shift in emphasis and priorities for education at all levels in this country. With increased emphasis on accountability for all students, and a focus on States' responsibilities to work with districts and schools to improve instruction and boost student achievement, SASA is committed to working closely with States in these areas and has developed a monitoring process aligned to the changes brought about by NCLB. Under this process, monitoring is conducted in three broad areas: accountability, instructional support, and compliance with fiduciary responsibilities. In preparation for the monitoring visit and during the onsite review, SASA staff conducted a number of activities (described in detail in the enclosed report) to verify compliance with applicable statutes and regulations.


The enclosed report contains a listing of the critical monitoring elements in each of the areas, a description of the scope of the monitoring review, and the findings, recommendations and commendations that the team cited as a result of the review. Within 30 business days of the date of this letter, please provide us with a detailed description of the actions your office has taken or will take regarding any findings noted in this report.

Page 2 - Superintendent Jack O'Connell and President Ruth E. Green

The ED team would like to thank Anne Just and her staff, particularly Carol Dickson, for their hard work and the assistance they provided prior to and during the review in gathering materials and providing access to information in a timely manner. The ED team was impressed with the efforts of your staff to implement statewide the many requirements of the selected Title I and Title X programs of the ESEA.

We look forward to working further with your staff on any follow-up activities, and in assisting them to improve the delivery of education services in California.

Sincerely,

A handwritten signature in black ink, appearing to read "Jacquelyn C. Jackson", followed by a circular stamp containing the number "35".

Jacquelyn C. Jackson, Ed.D.

Director

Student Achievement and
School Accountability Programs

Enclosure

cc: Anne Just, Title I Director

California Department of Education

September 20-24, 2004

Scope of Review: A team from the U.S. Department of Education's (ED) Student Achievement and School Accountability Programs office monitored the California Department of Education (CDE) the week of September 20 – 24, 2004. This was a comprehensive review of CDE's administration of the following programs authorized by the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act (NCLB): Title I, Part A; Title I, Part B, Subpart 3; and Title I, Part D. Also reviewed was Title X, Part C, Subtitle B, of the NCLB (also known as the McKinney-Vento Homeless Education Assistance Improvements Act of 2001).

In conducting this comprehensive review, the ED team carried out a number of major activities. In its review of the Title I, Part A program, the ED team analyzed evidence of implementation of the State accountability system, reviewed the effectiveness of the instructional improvement and instructional support measures established by the State to benefit local educational agencies (LEAs) and schools, and reviewed compliance with fiscal and administrative oversight activities required of the State educational agency (SEA). During the onsite review, the ED team visited three LEAs – Los Angeles Unified School District (LAUSD), Oakland Unified School District (OUSD) and the Sacramento City Unified School District (SCUSD). In all three school districts, the ED team interviewed administrative staff from schools that were identified for improvement and also private school officials. The ED team also conducted a meeting with parents in each of the school districts. Upon its return to Washington, DC, the ED team conducted conference calls with two additional LEAs (Stockton and Long Beach) to gather additional information on issues identified during the onsite review.

In its review of the Title I, Part B, Subpart 3 Even Start program, the ED team examined the State's request for proposals, State Even Start guidance, State indicators of program quality, and the most recent applications and local evaluations for three local projects located in Oakland, San Francisco, and Sacramento City. During the onsite review, the ED team visited five local projects in these districts and interviewed administrative and instructional staff. The ED team also interviewed the California Even Start State Coordinator to confirm information obtained at the local sites and to discuss State administration issues.

In its review of the Title I, Part D program, the ED team examined the State's application for funding, procedures and guidance for State agency (SA) applications under Subpart 1 and LEA applications under Subpart 2, technical assistance provided to SAs and LEAs, the State's oversight and monitoring plan and activities, SA and LEA subgrant plans and local evaluations for projects in Los Angeles and Sacramento City, as well as programs run by the State Department of Corrections. The ED team visited these sites and interviewed administrative, program and teaching staff. The ED team also interviewed the Title I, Part D California State coordinator to confirm information obtained at the

local sites and discuss administration of the program. The ED team member responsible for monitoring this program also participated in the conference calls to Long Beach and Stockton school districts to gather additional information on issues identified during the onsite review.

In its review of the Education for Homeless Children and Youth program (Title X, Part C, Subtitle B), the ED team examined the State's procedures and guidance for the identification, enrollment and retention of homeless students, technical assistance provided to LEAs with and without subgrants, the State's McKinney-Vento application, and LEA applications for subgrants and local evaluations for projects in Los Angeles and Sacramento City. The ED team visited these sites and interviewed administrative and program staff, and parents. The ED team also interviewed the California McKinney-Vento State coordinator to confirm information obtained at the local sites and discuss administration of the program. The ED team member responsible for monitoring this program also participated in the conference calls to Long Beach and Stockton school districts to gather additional information on issues identified during the onsite review.

Previous Audit Findings: Successive audit reports over the past several years have cited CDE for lack of compliance with the comparability requirements under ESEA. Although CDE repeatedly assured the auditors and ED that it has been monitoring for compliance with this requirement, to date, it has not provided documentation sufficient to demonstrate that comparability requirements are met in LEAs statewide.

Previous Monitoring Findings: ED last reviewed Title I, Part A programs in California in 1998 as part of a Federal integrated review initiative. There was one finding related to the comparability, which has remained unresolved. ED has not previously conducted a comprehensive review of the Even Start, Neglected/Delinquent Youth, or Education for Homeless Children and Youth programs in California.

Summary of Title I, Part A Monitoring Indicators

Monitoring Area 1, Title I, Part A: Accountability			
Indicator Number	Critical element	Status	Page
Critical element 1.1	The SEA has approved academic content standards for all required subjects or an approved timeline for developing them.	Met requirements	N/A
Critical element 1.2	The SEA has approved academic achievement standards and alternate academic achievement standards in required subject areas and grades or an approved timeline to create them.	Met requirements	N/A
Critical element 1.3	The SEA has approved assessments and alternate assessments in required subject areas and grades or an approved timeline to create them.	Finding Recommendation Commendation	6
Critical element 1.4	The SEA has implemented all required components as identified in its accountability workbook. N.B. Report card requirements are addressed separately (1.5).	Findings	7
Critical element 1.5	The SEA has published an annual report card and ensured that LEAs have published annual report cards as required.	Met Requirements Recommendation	7
Critical element 1.6	The SEA indicates how funds received under Grants for State Assessments and related activities (§6111) will be or have been used to meet the 2005-06 and 2007-08 assessment requirements of NCLB.	Met Requirements	N/A
Critical element 1.7	The SEA ensures that LEAs meet all requirements for identifying and assessing the academic achievement of limited English proficient students.	Finding Commendation	9

Monitoring Area 2: Instructional Support			
Element Number	Description	Status	Page
Critical element 2.1	The SEA designs and implements policies and procedures that ensure the hiring and retention of highly qualified staff.	Findings Recommendation	10
Critical element 2.2	The SEA provides, or provides for, technical assistance for LEAs and schools as required.	Met Requirements Recommendation	11
Critical element 2.3	The SEA establishes a Committee of Practitioners and involves the committee in decision making as required.	Met Requirements	N/A
Critical element 2.4	The SEA ensures that the LEAs and schools meet parental involvement requirements.	Finding	11
Critical element 2.5	The SEA ensures that schools and LEAs are identified for improvement, corrective action, or restructuring as required and that subsequent, required steps are taken.	Finding Recommendation	12
Critical element 2.6	The SEA ensures that requirements for public school choice are met.	Finding	13
Critical element 2.7	The SEA fulfills the statutory requirements for the provision of supplemental educational services (SES).	Finding Recommendation	13
Critical element 2.8	The SEA ensures that LEAs and schools develop schoolwide programs that use the flexibility provided to them by law to improve the academic achievement of all students in the school.	Finding	14
Critical element 2.9	The SEA ensures that LEAs and schools develop and maintain targeted assistance programs that meet all required components.	Finding	14

Monitoring Area 3, Title I, Part A: Fiduciary responsibilities			
Indicator Number	Critical element	Status	Page
Critical element 3.1	The SEA ensures that its component LEAs are audited annually, if required, and that all corrective actions required through this process are fully implemented.	Met Requirements	N/A
Critical element 3.2	The SEA complies with the allocation, reallocation, and carryover provisions of Title I.	Met Requirements	15
Critical element 3.3	The SEA complies with the maintenance of effort provisions of Title I.	Met Requirements	16
Critical element 3.4	The SEA ensures that LEAs comply with the comparability provisions of Title I.	Finding	- 16
Critical element 3.5	The SEA ensures that LEAs provide Title I services to eligible children attending private schools.	Finding <i>K. Joy</i>	17
Critical element 3.6	The SEA has a system for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated by the agency.	Met Requirements	N/A
Critical element 3.7	The SEA has an accounting system for administrative funds that includes (1) State administration, (2) reallocation, and (3) reservation of funds for school improvement.	Met Requirements	N/A
Critical element 3.8	The SEA has a system for ensuring fair and prompt resolution of complaints.	Met Requirements	N/A
Critical element 3.9	The SEA ensures that the LEA complies with the rank order procedures for the eligible school attendance area.	Met Requirements	N/A
Critical element 3.10	The SEA conducts monitoring of its subgrantees sufficient to ensure compliance with Title I program requirements.	Met Requirements	N/A
Critical element 3.11	The SEA ensures that its LEAs comply with the provision for submitting an annual plan to the SEA.	Met Requirements	N/A
Critical element 3.12	The SEA and LEA comply with requirements regarding the reservation of administrative funds.	Met Requirements	N/A
Critical element 3.13	The SEA ensures that Title I funds are used only to supplement or increase non-Federal sources used for the education of participating children and not to supplant funds from non-Federal sources.	Met Requirements	N/A

Title I, Part A
Monitoring Area: Accountability

Indicator 1.3 - The SEA has approved assessments and alternate assessments in required subject areas and grades or an approved timeline to create them.

Finding: The CDE allows out-of-level testing at 1-2 grade levels below the student's enrolled grade level in grades five and higher. The CDE is considering allowing one grade level below the enrolled grade level in grade three (there was no mention of grade four in the proposed policy). Parents are advised that the test results are not on grade level and the decision to test off level is directed by the IEP. The scores generated by this policy are counted as non-proficient, but as participants in the assessment favoring the 95% participation requirement. Similarly, level three accommodations (modifications) are not counted as proficient, but counted as participating.

Citation: Section 1111(b)(3)(C)(ix)(II) of ESEA requires the State assessment to provide accommodations for students with disabilities in order to measure their academic achievement relative to State academic content and achievement standards.

Further Action Required: The CDE must inform local school districts that out-of-level and level three accommodated test results will not be included in participation rates, and will count against the 95% participation requirement. The CDE must correct their school and district accountability analyses to reflect this policy before the adequate yearly progress (AYP) and determinations of need for improvement are made for the 2004-05 school year.

Recommendation: The CDE allows test accommodation for students with disabilities (SWDs) and English language learners (ELLs) that are generally accepted. Districts are permitted to translate test administration instructions and provide a glossary of terms in native languages. However, districts are left to their own initiative to provide these translations. This may produce an accommodation that is lacking in standardization and uneven in quality. Districts lacking the capacity to provide competent translations or translators may put students at a disadvantage. This uneven capacity may also exist among different schools within a school district.

The CDE should translate test administration instructions into the three major languages other than English spoken by California students as identified on the Home language Survey (R-30). The CDE should also conduct cognitive labs to determine which lexical items on their assessments present obstacles to ELLs and translate those terms into a glossary in the three major languages. The CDE may also wish to provide translated audio instructions recorded on a compact disk along with written translations.

Commendable Practices:

1) The CDE is committed to maintaining the technical quality of their State standards-based assessment and the quality of the data used in accountability. The CDE annually

replaces 50% of the items in the assessment, repeats the analyses for technical quality, and generates a new technical manual. The CDE releases a portion of their items annually. The CDE conducts test integrity audits (through a contractor) at school levels that examine test security and test administration issues.

2) The CDE has applied high standards of technical quality in developing the California English Language Development Test (CELDT) that measures the English proficiency of ELLs in reading, writing, listening and speaking, in grades 3-12 (K-2 is in development and under discussion with the Office of English Language Acquisition). The CDE has developed English language development (ELD) standards in 1999 that are informed by the State's English language arts (ELA) standards. The CDE then created item specifications that reflected both ELD and ELA standards. There was broad participation from the field in developing the standards, item writing, and item review for content relevance and bias. The CDE replaces 25% of the items annually. The CDE applies accommodations for students with disabilities who are taking the CELDT.

Indicator 1.4 – The SEA has implemented all required components as identified in its accountability workbook

Finding: The CDE did not identify local school districts in need of improvement in a manner that is consistent with the statute.

CDE applies a second criterion to make determinations for district improvement that overrides the AYP determination. According to pages 55-56 of the CDE *Information Guide for the 2004 Accountability Progress Report*, a district receiving Title I funds will be identified for improvement if it does not achieve AYP and does not reach the statewide threshold on the Academic Performance Index (API) for economically disadvantaged students. If a district fails to make AYP for two consecutive years but reaches or surpasses the API threshold, the district is not identified as needing improvement.

Citation: Section 1116(c)(3) of ESEA requires that a State identify a school district for improvement if it failed to make AYP, as defined in section 1111(b)(2) of ESEA, for two consecutive years. Although a State may include other academic indicators in determining AYP, the State may not use those indicators to reduce the number of, or change, the districts that would otherwise be subject to improvement or corrective action. See section 1111(b)(2)(D)(ii) of ESEA.

Corrective Action: CDE is herewith advised that it is not in compliance with section 1116(c)(3) of ESEA. In responding to this report, CDE must submit to ED within 30 days information or evidence of the corrective actions it has taken to redress the misidentification of districts in improvement. Additionally, CDE must describe its corrected procedure for identifying school districts for improvement and submit the procedure as an amendment to the California accountability workbook. This procedure may not include an additional indicator that relieves school districts of improvement status if they fail to meet AYP for two consecutive years. The resolution of this finding

will be considered appropriate only after ED receives the requested information or evidence from CDE and concludes that the actions address the findings in an appropriate manner. Moreover, ED reserves its option to take further administrative actions, including the withholding of funds. If ED decides to take such actions, it will notify CDE of those actions in a separate document.

Finding: The CDE makes an AYP determination for all schools that includes all students in the school in the analysis. However, if a Targeted Assistance School (TAS) is found not to have made AYP for two consecutive years, then students on free-reduced priced lunch (Title I eligible) are analyzed to make a school improvement determination to satisfy Section 1116. There is no further disaggregation conducted.

Citation: Section 1116(b)(1)(D) of ESEA allows school districts to review the progress of students served, or eligible for services, under Title I. Section 1111(b)(2)(C)(v)(II) of ESEA requires the disaggregation of achievement results by subgroups with statistically reliable numbers.

Further Action Required: The CDE must disaggregate assessment results for all subgroups within the Title I eligible population every year and make school improvement determinations for TAS on that basis. The CDE must include assessment results from all students when determining AYP at the district level.

Indicator 1.5 - The SEA has published an annual report card and ensured that LEAs have published annual report cards as required.

Recommendation: All required information for the State and local report cards are available, but not in the same place and not easily accessible. Constituents would have to access multiple pages and visit multiple sites. Some information is not readily available. For example, the State Report Card does not report the percent of students achieving the annual measurable objective (AMO). A reader would have to mentally add the percent proficient and advanced and compare that to the AMO, which is footnoted under the table. Also, in district report cards, the names of schools in improvement are not listed separately, but with all schools with their improvement status by number of years in improvement. In a large district like the LAUSD, it would be virtually impossible to list the schools in improvement without software that could sort through the 1,042 schools in the LAUSD. The reader would also have to know what first year in improvement (school choice) means in comparison to later years (supplemental services to restructuring).

The CDE should review their Report Cards and examine ways to make the information more easily accessible and present all the required information efficiently. The CDE should also publish results in bound, hard copies for families without Internet access.

Indicator 1.7 - The SEA ensures that LEAs meet all requirements for identifying and assessing the English language proficiency of limited English proficient students.

Finding: The CDE allows ELLs to vacate the limited English proficient (LEP) status if the student is proficient on the CELDT and is proficient on the ELA subtest of the CST/CAHSEE for three years. A local indicator of proficiency and parental approval is also considered in the exiting decision. The OUSD uses a GPA as a local indicator of proficiency.

Citation: Section 1111(b)(7) of ESEA requires States to ensure that local school districts assess the English language proficiency of ELLS annually.

Further Action Required: The CDE must amend the accountability workbook to reflect the use of the local indicator and parental approval as exit criteria for LEP students. Students who vacate the LEP status may be counted in the LEP subgroup for up to two years after exiting. Former LEP students must be included in other relevant categories and would no longer need to be assessed for language proficiency and would not be eligible for English language services.

Commendable Practices: CDE has made a concerted effort to reach out to families whose home language is not English. CDE has translated the State report card, student/parent test reports into Spanish, which account for over 80% of non-English speaking households. In the OUSD, test and accountability information are provided in five languages to all families when delivered by mail. The interpretation guides for the STAR and CAPA are available in seven languages when accessed on the web. The CDE is developing a Spanish standards-based assessment to provide additional achievement information for students who are in waived native language instruction programs. This assessment will not replace the CST, but will be used to inform instruction and evaluate programs.

CONFIDENTIAL ED FUNDING
ESEA 2001/04 F.13

Title I, Part A
Monitoring Area: Instructional Support

Indicator 2.1 – The SEA designs and implements policies and procedures that ensure the hiring and retention of qualified paraprofessionals and ensure that parents are informed of educator credentials as required.

Finding: The CDE does not have a system in place to ensure that all instructional paraprofessionals hired in its LEAs before January 8, 2002, and working in a program supported with Title I funds, will be qualified by January 8, 2006 as required.

The CDE has not provided its LEAs with guidance and technical assistance sufficient to ensure that this requirement is met. The CDE did not collect information from its LEAs on their number of qualified paraeducators until Spring 2004, and will not collect this information again until Spring 2005.

With fifteen months until the deadline that requires all paraprofessionals working in programs supported with Title I funds to meet the requirements by January 8, 2006, CDE estimates that only 36% of instructional paraprofessionals Statewide meet these requirements. Therefore, the ED team concludes that it is unlikely all instructional paraprofessionals working in programs funded by Title I will be qualified by January 8, 2006.

Citation: Section 1119(d) of ESEA states that each LEA receiving Title I funds shall ensure that all paraprofessionals hired before the date of enactment of NCLB, and working in a program supported with Title I funds, shall, not later than four years after the date of enactment, satisfy the requirements for being qualified as defined in subsection (c).

Further Action Required: The CDE must provide ED with a detailed explanation and timetable of activities to ensure that its LEAs will have only qualified paraprofessionals working in Title I funded programs by January 8, 2006.

Finding: The CDE has not ensured that its LEAs notify parents if their child is assigned to or taught by a teacher who is not highly qualified for four or more weeks. Interviews in LEAs visited indicated inconsistency in the implementation of this requirement.

Citation: Section 1111(h)(6)(B)(ii) of ESEA states that in addition to the information that parents may request about teachers, a school that receives Title I, Part A funds shall provide to each parent timely notice if the parent's child has been assigned, or has been taught, for four or more consecutive weeks by a teacher who is not highly qualified.

Further Action Required: The CDE must ensure that all of its LEAs notify parents as required if a child is assigned to or taught by a teacher who is not highly qualified for four or more weeks. The CDE must provide ED with documentation that its LEAs have

been given this specific directive and that it has included this requirement in its monitoring instrument.

Recommendation: In June 2003, on the recommendation of CDE staff, the California State Board of Education adopted a policy that gives each LEA the responsibility for developing or selecting a "formal local academic assessment" if it chooses to use that option to qualify currently-employed paraprofessionals. The policy states that each LEA is to determine whether or not to exercise the option of having paraprofessionals demonstrate knowledge and ability to assist in instruction through the use of a local assessment. Further, if the LEA chooses to use a formal local assessment to qualify paraeducators, it is up to the LEA to determine its content and format. The CDE has interpreted this policy to mean that it has no role in the aforementioned assessment process. ED recommends, however, that the CDE provide guidelines to LEAs that would help them to determine what constitutes the "formal local assessment" that the statute allows. LEAs statewide would benefit from guidelines for developing and scoring a local assessment and/or judging the appropriateness of a commercially produced assessment, and doing so would ensure consistency in the functional qualifications of paraprofessionals throughout the State.

Indicator 2.2 – The SEA provides, or provides for, technical assistance for LEAs and schools as required.

Recommendation: ED recommends that the CDE communicate more effectively with its LEAs regarding the structure and services available through the statewide system of support. This recommendation is based on the observation that although the CDE appears to have created and implemented a statewide system of support as required, interviews in the LEAs visited by ED indicated that staff are not aware that the system exists or that there are services available to all Title I schools because of this system. A variety of staff in the LEAs visited indicated that they do not rely on or look to the State for the kinds of technical assistance that the support system is designed to provide, but instead move forward on their own to initiate assistance to their schools.

Indicator 2.4 – The SEA ensures that the LEA and schools meet parental involvement requirements.

Finding: The CDE has not ensured that its LEAs and schools actively involve parents in developing parental involvement policies and school-parent compacts. The LEAs interviewed by the ED team had parental involvement policies, guidelines, and structures to oversee parental involvement activities, but schools visited in some of the LEAs did not actively involve parents in developing school-level parental involvement policies and school-parent compacts. Instead, these schools used a parental involvement policy and school-parent compact created by the LEA.

Citation: Sections 1118 (b) and (d) of ESEA require that each school served under Title I shall jointly develop with parents a written parent involvement policy agreed on by the

parents and a school-parent compact that outlines how parents, the entire school staff, and students will share the responsibility for improved student academic achievement.

Further Action Required: The CDE must provide ED with documentation that all schools receiving Title I funds have been informed that they must establish a written parental involvement policy and school-parent compact with the parents of students attending their school. Further, the CDE must provide ED with a representative sample of such policies and compacts that have been developed consistent with the requirements in section 1118 (b) and (d) of ESEA.

Indicator 2.5 – The SEA ensures that schools and LEAs are identified for improvement, corrective action, or restructuring as required and that subsequent, required steps are taken.

Finding: The CDE provided evidence that it had notified all LEAs of school and/or LEA identification for improvement, corrective action, or restructuring on August 30, 2004. However, interviews with LEA staff reveal that in one or more LEAs district staff have not yet notified schools that they are identified for year one of Program Improvement (PI) and informed them of required actions related to that status. As a result, parents of children who attend those schools have not been notified regarding the identification of those schools and their public school choice option.

Citation: Section 1116(b)(1) of ESEA requires LEAs to identify for improvement any school receiving Title I, Part A funds that does not make AYP as defined in the State's approved accountability plan for two consecutive years. This identification must be made before the beginning of the school year following the one in which the school did not make AYP for the second consecutive time.

Further Action Required: The CDE must ensure that all of its LEAs inform schools identified for year one PI of their status immediately and explain the related requirements and provide documentation that it has done so. ED also requires that CDE provide an explanation of how it plans to meet these requirements in a timely manner in future years.

Recommendation: ED recommends that the CDE provide LEAs with additional assistance on what information must be included when notifying parents and the community that a school has been identified for improvement. The statute specifically states that eligible parents should be provided with information about why the school was identified; how the school compares to other schools in the district and State academically; how the school is addressing the problems that caused it to be identified and what the LEA and SEA are doing to help the school; how parents can be involved in addressing the problem; and an explanation of the parents' options to transfer to another school and, if applicable, obtain supplemental educational services. The letters that LEAs used to notify parents of a school's identification included most of the above information, but not all of it in every case.

Indicator 2.6 – The SEA ensures that requirements for public school choice are met.

Finding: The CDE provided evidence that it had notified all LEAs of school and/or LEA identification for improvement, corrective action, or restructuring on August 30, 2004. However, ED team interviews revealed that in one or more LEAs, district staff have not yet notified schools that they are identified for year one of PI and informed them of required actions related to that status. As a result, parents of children who attend those schools have not been notified regarding the identification of those schools and their public school choice option.

Citation: Section 1116(b)(1)(E) of ESEA requires LEAs to provide all students in schools identified for improvement with the opportunity to transfer to another public school not later than the first day of the school year following notification.

Further Action Required: The CDE must ensure that its LEAs inform year one PI schools of their status immediately. ED requires that the CDE provide evidence that parents of eligible students have been notified of their school choice options, as required, by submitting a copy of one letter sent to parents in each of the year one PI schools from the three districts visited by the ED team.

Indicator 2.7 – The SEA ensures that requirements for the provision of supplementary educational services (SES) are met.

Finding: Although the CDE provides guidance on the implementation of SES, OUSD imposes additional requirements on SES providers and inappropriately restricts parental choice of services. Specifically, OUSD has told providers that they must offer math instruction only in grades 3-8. OUSD also set a class size limit for providers and required providers to follow a certain process for hiring staff. The OUSD has not offered SES to students in grades K-2. LEAs may not impose additional restrictions on providers once they have gained State approval, nor may they limit parents' choices for services.

Citation: Section §1116(e)(4) of ESEA outlines the responsibilities of each State to create and implement a process for selecting supplemental educational service providers. The LEA may not override the decisions of the State by imposing additional programmatic requirements upon an already approved provider and its program. Additional clarification on this issue came in a policy letter to Chief State School Officers, dated August 26, 2004, from Assistant Secretary Raymond Simon. That letter may be accessed at:

<http://www.ed.gov/policy/elsec/guid/stateletters/choice/ses082604.html>

Further Action Required: The CDE must ensure that its LEAs understand the requirements for SES and that they know whom to contact at the CDE for advice and guidance on working with approved providers. In addition, ED requires that the CDE

provide a copy of OUSD's revised list of requirements for SES providers and evidence that students in grades K-2, in eligible schools, have been offered SES along with all other eligible students.

Recommendation: ED recommends that the CDE clarify and strengthen its process for determining the effectiveness of SES providers, including the role of LEA feedback about providers, and withdrawing approval if justified. Further, ED suggests that information about this improved process be shared with its LEAs, since staff in LEAs visited expressed concerns regarding the variable quality of services provided to students in their districts through the various providers. The ED team understands that this issue has been addressed in proposed regulations that are currently in a 45-day public comment period, with a public hearing to be held on November 8.

Indicator 2.8 – The SEA ensures that LEAs and schools develop schoolwide programs that use the flexibility provided to them by law to improve the academic achievement of all students in the school.

Finding: The CDE has not ensured that schoolwide plans contain the ten components required under NCLB. Further, ED found no evidence that staff in schoolwide program schools were aware of the required components that must be included. The template for school plans developed by the CDE contains the following components: standards-based curriculum, assessment and research-based instructional strategies; targeted professional development, parent and community involvement; and leadership, school organization and support structures. Some of the required schoolwide components are subsumed in the four core components. However, the plans reviewed do not contain the following required components: strategies to attract highly qualified teachers to high-need schools; plans for pre-school transition, and coordination and integration of federal, State and local programs.

Citation: Section 1114(B) (1) of ESEA requires that a school wishing to implement a schoolwide program develop a plan that contains 10 required components.

Further Action Required: The CDE must provide to ED a plan outlining the steps it will take to ensure that all schoolwide schools have plans that address each of the 10 required components, either as a separate plan or as part of an integrated plan which includes the CDE school plan. The CDE must describe the steps it is taking to provide technical assistance to LEAs and schools on how to plan and implement schoolwide programs. In addition, the CDE must submit to ED the section of the revised plan that addresses the 10 required components from one school in each of the LEAs visited by the ED team.

Indicator 2.9 – The SEA ensures that LEA targeted assistance programs meet all requirements.

Finding: The CDE has not ensured that its LEAs and schools meet the requirements for identifying students to be served in targeted assistance programs. LEA and school staff interviewed did not consistently reflect the understanding that multiple, objective criteria

must be used to identify which students will be served. In one case, no students were identified; instead, all who qualified for free and reduced price lunch were provided service on an as-needed basis. In another interview, school staff use only standardized test scores in reading and mathematics to determine which students will be served.

Citation: Section 1115(b)(1)(B) of ESEA states that from among the student population eligible for services, eligible children are those identified by the school as failing, or most at risk of failing, to meet the State's challenging student academic achievement standards on the basis of multiple, educationally related, objective criteria established by the local educational agency and supplemented by the school, except that children from preschool through grade 2 shall be selected solely on the basis of such criteria as teacher judgment, interviews with parents, and developmentally appropriate measures.

Further Action Required: The CDE must review and clarify for its LEAs the requirements for identifying students to be served in targeted assistance schools. The CDE must describe to ED the steps it took to accomplish this task and provide a representative sampling of evidence that students in targeted assistance schools are being identified for services properly.

Title I, Part A Monitoring Area: Fiduciary

Indicator 3.2 – The SEA complies with the allocation, reallocation, and carryover provisions of Title I.

Recommendation: The LAUSD has exceeded the 15 percent carryover limitation for two consecutive years (2002-03 and 2003-04). The Secretary of Education allowed for a waiver of the 15 percent carryover limit if the excess carryover was caused by the delayed implementation of supplemental services and public school choice for the 2002-03 school year. The August 28, 2003 letter from the Secretary states that ED has decided to use the transition authority in the statute to give LEAs the authority to exceed the carryover requirement if, and only if, LEAs need to do so to spend the equivalent of 20 percent of their fiscal year 2002 allocations on choice related transportation and supplemental services. The LAUSD is seeking a waiver from the CDE for excess carryover for the 2003 fiscal year. The CDE should monitor closely the LAUSD budget and expenditures to ensure that if the 15 percent carryover limit is exceeded for the 2004 fiscal year that the funds are reallocated according to the CDE's reallocation policy.

Recommendation: The CDE should encourage LAUSD to consider setting aside fewer Title I funds for reservations and increasing the per-pupil allocation to its served schools. In light of the excess carryover funds the past two years, LAUSD should consider raising the per-pupil allocation amounts for its served schools, which currently receive \$305 for schools at 65 percent poverty or greater, and \$206 for schools between 40 percent and 64 percent poverty.

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Indicator 3.3 - The SEA complies with the maintenance of effort provisions of Title I.

Recommendation: The ED team recommends that the CDE complete its maintenance of effort (MOE) determinations before the beginning of the school year for which LEA allocations would be affected by failure to maintain effort rather than after the school year has been completed. The ED team noted that the CDE was just now determining whether LEAs had met the MOE requirement for school year (SY) 2003-04 allocation purposes. This determination is taking place well after SY 2003-04 ended rather than at the beginning of the school year. As a result, any LEA that failed to maintain effort did not know that the CDE would be reducing the SY 2003-04 funds available to it under Title I and the other ESEA covered programs until after the school year ended and the LEA had made commitments based on a larger allocation. The CDE staff indicated that starting with SY 2004-05, it would complete its MOE calculations in the fall and notify LEAs that failed to maintain effort about how much their Federal funding would be reduced early in the new school year rather than after the school year has ended. ED urges the CDE to move up the time it completes its MOE calculations so that LEAs have time to request an MOE exemption from ED and plan for funding reductions.

Indicator 3.4 - The SEA ensures that the LEA complies with the comparability provisions of Title I.

Finding: The CDE has not ensured that LEAs in the State have complied with the comparability requirement of Title I. The CDE issued a directive to LEAs outlining instructions for determining whether Title I schools receive State and local resources that are comparable to those received by non-Title I schools. In visits with LAUSD, OUSD, and SCUSD, however, the ED team found that those LEAs have neither completed the calculations needed to meet the comparability requirements of Title I, nor submitted this information to the CDE. Discussions with staff at CDE indicate that the CDE has not directly monitored its LEAs at least once every two years to review comparability calculations to ensure that they meet these requirements. The CDE indicated that the State has relied on A-133 audits to determine whether LEAs have met the comparability requirements.

The ED team is extremely concerned that over the past several years, the California State Auditor has repeatedly cited CDE for lack of implementation of the comparability requirements under ESEA. Further, the ED team cited comparability as a compliance finding in its prior monitoring of CDE, but never received documentation to resolve or close the finding. CDE has responded to ED and to the audit report findings that it has ensured that comparability requirements are being met by its LEAs; however, information gathered during the onsite review indicates that CDE has only recently addressed the issue (during this past fiscal year).

Citation: Section 1120A(c) of ESEA states that an LEA may receive Title I, Part A funds only if State and local funds are used in participating Title I schools to provide services that, taken as a whole, are at least comparable to services in non-Title I schools.

Further action required: As a requirement for receiving Title I, Part A funds, school districts must ensure that their Title I and non-Title I schools are comparable each year. The CDE must develop procedures for ensuring that its LEAs perform the necessary annual calculations to determine that services provided with State and local funds in Title I schools are comparable to non-Title I schools. The CDE must provide to ED a plan that shows how it will ensure that all of its LEAs comply with the comparability requirements at least once every two years. In addition, the CDE must provide the ED team with current year comparability calculations for LAUSD, OUSD and SCUSD.

Indicator 3.5 - The SEA ensures that LEAs provide Title I services to eligible children attending private schools.

Finding: The LAUSD is assessing individual participants rather than assessing the effectiveness of Title I programs toward meeting agreed upon standards. Though LAUSD has consulted with private school officials in determining how individual students will be academically assessed, LAUSD has not determined with private school officials how the Title I program at each school will be assessed and the annual progress each program must meet.

Citation: Section 200.63 (b)(5) of the Title I Regulations under ESEA states that in order to have timely and meaningful consultation, an LEA must consult with appropriate officials from private schools during the design and development of the LEA's program for eligible private school children on issues such as how the LEA will assess academically the services to eligible private school children and how the LEA will use the results of that assessment to improve Title I services.

Further Action Required: The CDE must ensure that the LAUSD consults with private school officials to determine how the results of academic assessments of the Title I programs will be used to improve services to private school children. The CDE must also ensure that LAUSD annually assesses the progress of the Title I programs toward enabling private school Title I participants based on agreed-upon standards and the annual progress each program must meet. The CDE must provide the ED team with documentation that LAUSD has fulfilled these requirements.

Summary of Title I, Part B, Subpart 3 (Even Start) Monitoring Indicators

Monitoring Area 1, Title I, Part B, Subpart 3: Accountability			
Indicator Number	Critical Element	Status	Page
Critical element 1.1	The SEA complies with the subgrant award requirements.	Findings	22
Critical element 1.2	The SEA requires applicants to submit applications for subgrants with the necessary documentation.	Finding	23
Critical element 1.3	In making non-competitive continuation awards, the SEA reviews the progress of each subgrantee in meeting the objectives of the program and evaluates the program based on the Indicators of Program Quality.	Met Requirements	N/A
Critical element 1.4	The SEA refuses to award subgrant funds to an eligible entity if the agency finds that the entity has not sufficiently improved the performance of the program, as evaluated, based on the Indicators of Program Quality.	Met Requirements	N/A
Critical element 1.5	The SEA develops, based on the best available research and evaluation data, Indicators of Program Quality for Even Start programs.	Met requirements	N/A
Critical element 1.6	The SEA uses the Indicators of Program Quality to monitor, evaluate, and improve local programs within the State.	Met Requirements	N/A
Critical element 1.7	The SEA conducts monitoring of its subgrantees sufficient to ensure compliance with Even Start program requirements.	Met Requirements Commendation	23
Critical element 1.8	The SEA ensures that projects provide for an independent local evaluation of the program that is used for program improvement.	Met Requirements Commendation	24

Monitoring Area 2, Title I, Part B, Subpart 3: Instructional Support			
Indicator Number	Critical Element	Status	Page
Critical element 2.1	The SEA uses funds to provide technical assistance to local programs to improve the quality of Even Start family literacy services.	Met Requirements Commendation	24
Critical element 2.2	Each program assisted shall include the identification and recruitment of families most in need.	Met Requirements Recommendation	24
Critical element 2.3	Each program shall include screening and preparation of parents and enable those parents and children to participate fully in the activities and services provided.	Met Requirements	N/A
Critical element 2.4	Families are participating in all core instructional services.	Finding	24
Critical element 2.5	Each program shall be designed to accommodate the participants' work schedule and other responsibilities, including the provision of support services, when those services are unavailable from other sources.	Met Requirements	N/A
Critical element 2.6	Each program shall include high-quality, intensive instructional programs that promote adult literacy and empower parents to support the educational growth of their children, and in preparation of children for success in regular school programs.	Met Requirements	N/A
Critical element 2.7	All instructional staff of the program hired after enactment of the LIFT Act (December 21, 2000), whose salaries are paid in whole or in part with Even Start funds, meet the Even Start staff qualification requirements.	Finding	25
Critical element 2.8	By December 21, 2004, a majority of the individuals providing academic instruction shall have obtained an associate's, bachelor's, or graduate degree in a field related to early childhood education, elementary school or secondary school education, or adult education.	Met Requirements	N/A
Critical element 2.9	By December 21, 2004, if applicable, a majority of the individuals providing academic instruction shall meet the qualifications established by the State for early childhood education, elementary or secondary education, or adult education provided as part of an Even Start program or another family literacy program.	Met Requirements	N/A

Monitoring Area 2, Title I, Part B, Subpart 3: Instructional Support			
Indicator Number	Critical Element	Status	Page
Critical element 2.10	By December 21, 2004, the person responsible for administration of family literacy services has received training in the operation of a family literacy program.	Met Requirements Recommendations	25
Critical element 2.11	By December 21, 2004, paraprofessionals who provide support for academic instruction have a secondary school diploma or its recognized equivalent.	Met Requirements	N/A
Critical element 2.12	The local programs shall include special training of staff, including child-care workers, to develop the necessary skills to work with parents and young children.	Met requirements	N/A
Critical element 2.13	The local programs shall provide and monitor integrated instructional services to participating parents and children through home-based programs.	Finding	25
Critical element 2.14	The local programs shall operate on a year-round basis, including the provisions of some program services, including instructional and enrichment services, during the summer months.	Met Requirements	N/A
Critical element 2.15	The local program shall be coordinated with other relevant programs under the Adult Education and Family Literacy Act, the Individuals with Disabilities Act, and Title I of the Workforce Investment Act of 1988, and the Head Start program, volunteer literacy programs, and other relevant programs.	Met requirements	N/A
Critical element 2.16	The local programs shall use instructional programs based on scientifically based reading research for children and adults.	Finding	26
Critical element 2.17	The local program shall encourage participating families to attend regularly and to remain in the program a sufficient time to meet their program goals.	Finding	26
Critical element 2.18	The local programs shall use reading-readiness activities for preschool children based on scientifically based reading research.	Finding	26
Critical element 2.19	The local program shall, if applicable, promote the continuity of family literacy to ensure that individuals retain and improve their educational outcomes.	Met Requirements	N/A

Monitoring Area 3, Title I Part B, Subpart 3: SEA Fiduciary responsibilities

Indicator Number	Critical Element	Status	Page
Critical element 3.1	The SEA complies with the allocation requirements for State administration and technical assistance and award of subgrants.	Met requirements	N/A
Critical element 3.2	The SEA ensures that subgrantees comply with statutory and regulatory requirements on uses of funds and matching.	Finding	27
Critical element 3.3	The SEA complies with the cross-cutting maintenance of effort provisions.	Met Requirements	N/A
Critical element 3.4	The SEA ensures timely and meaningful consultation with private school officials on how to provide Even Start services and benefits to eligible elementary and secondary school students attending non-public schools and their teachers or other instructional personnel, and local programs provide an appropriate amount of those services and benefits through an eligible provider.	Finding	27
Critical element 3.5	The SEA has a system for ensuring fair and prompt resolution of complaints.	Met Requirements Recommendations	28

Title I, Part B, Subpart 3 (Even Start)
Monitoring Area 1: Accountability

Indicator 1.1 – The SEA complies with the subgrant award requirements.

Finding: The review panel used by the SEA to approve applications submitted to the State under Even Start competitions did not have the required composition. A review panel used for the purpose of approving Even Start applications must consist of at least three members, including one early childhood professional, one adult education professional, and one individual with expertise in family literacy programs. The review panel used by the CDE generally included only two members.

Citation: Section 1238(a)(3) of ESEA states that a review panel shall consist of at least three members, including one early childhood professional, one adult education professional, and one individual with expertise in family literacy programs.

Further action required: The CDE, in future competitions for Even Start subgrants, must use a review panel of at least three members including individuals with the required expertise.

Finding: The CDE's subgrant application review process lacks several required elements. The review form includes only one of the two statutory priorities. The CDE's review form indicates that 10 priority points will be awarded to applications from Empowerment Zones and Enterprise Communities. However, the CDE also must give priority to subgrant applications that target services primarily to areas with a high percentage or a large number of children and families who are in need of Even Start services as indicated by high levels of poverty, illiteracy, unemployment, limited English proficiency, or other need-related indicators. In addition, the peer review panel may approve subgrant applications only if the applicant proposes to provide services for at least a 3-year age range. The review form does not include that requirement.

Citation: Section 1238(a)(2)(A) of ESEA states that the SEA shall give priority for Even Start subgrant applications that target services primarily to families described in section 1238(a)(1)(B) (families in areas with a high percentage or a large number of children and families who are in need of Even Start services as indicated by high levels of poverty, illiteracy, unemployment, limited English proficiency, or other need-related indicators). Section 1238(a)(1)(C) states that the review panel established by the SEA will approve Even Start subgrant applications that (in part) provide services for at least a 3-year age range.

Further action required: The CDE, in future competitions for Even Start subgrants, in addition to giving priority to applicants located in Empowerment Zones or Enterprise Communities must give priority to Even Start subgrant applications that target services primarily to families in areas with a high percentage or a large number of children and families who are in need of Even Start services as indicated by high levels of poverty, illiteracy, unemployment, limited English proficiency, or other need-related indicators,

and must approve subgrant applications only if they propose to serve a 3-year age range of children, which may begin at birth.

Indicator 1.2 – The SEA requires applicants to submit applications for subgrants with the necessary documentation.

Finding: The program application does not include all statutory requirements and therefore the CDE does not require the applicants to submit applications with the necessary documentation. Specifically, the application lacks the following information required by the Even Start statute:

- Description of how the project will incorporate the following program elements: identification and recruitment of most in need families, screening and preparation for participation, year round services, coordination with programs listed in section 1235(9), instruction based on scientifically based reading research for early childhood education, parenting education, and interactive parent/child literacy activities, regular attendance, and reading readiness activities based on scientifically based reading research;
- Estimate of the number of participants to be served;
- Description of how the plan of operation is integrated with other ESEA programs or other federally funded programs;
- References to “high quality” and “intensive” instructional components under the “Plan of Operation” portion on integration of instructional components.

Citation: Section 1237(c)(1) of ESEA states that an application submitted to the SEA in request of an Even Start subgrant includes a plan of operation and continuous improvement for the program that includes the items listed above under “Finding.”

Further action required: The CDE must integrate these omitted requirements into its application for Even Start subgrants.

Indicator 1.7 – The SEA conducts monitoring of its subgrantees sufficient to ensure compliance with Even Start program requirements.

Commendable practice: The CDE performs extensive monitoring to ensure compliance with Even Start program requirements including onsite monitoring of at least one third of subgrantees each year. Monitoring also includes desk reviews of all new projects three months after the award of the grant and annual desk reviews of all local projects using the State performance indicators to identify projects “at risk” and projects in need of technical assistance. The CDE audit division is also used to assist in monitoring new projects to ensure capacity for implementing Even Start services.

Indicator 1.8 – The SEA ensures that projects provide for an independent local evaluation of the program that is used for program improvement.

Commendable practice: The CDE ensures that projects provide for an independent local evaluation of the program that is used for program improvement. In addition to meeting the statutory requirements, each local evaluation addresses performance on State indicators, includes an analysis of evaluation data, and includes a supplement that addresses program improvement issues. Moreover, each local project is required to assess its own progress using program quality indicators. The State also provides guidance to local projects on the qualifications for local evaluators.

Title I, Part B, Subpart 3 (Even Start) Monitoring Area 2: Instructional Support

Indicator 2.1 – The SEA uses funds to provide technical assistance to local programs to improve the quality of Even Start family literacy services.

Commendable practice: The CDE provides technical assistance to local projects to improve the quality of Even Start family literacy services. Technical assistance goes beyond conferences and meetings to include a system of mentoring and coaching for all new and second year projects. The CDE also uses staff from the State audit division to provide assistance to projects on fiscal issues and accounting.

Indicator 2.2 – Each program assisted shall include the identification and recruitment of families most in need.

Recommendation: Staff at some local projects did not seem to understand that families most in need of family literacy services are a subset of families eligible for Even Start services. Projects also did not have documentation of family eligibility or their status as among those most in need. The CDE should require local projects to maintain documentation demonstrating the eligibility of participating families as well as documentation that the families are among those most in need of Even Start services.

Indicator 2.4 – Families are participating in all core instructional services.

Finding: Project staff in the Even Start project in the San Francisco Independent School District (ISD) at Hunter's Point indicated that family members participated in an array of instructional services from many sources, but it wasn't clear that all families participated in adult education, early childhood education, parenting education, and interactive literacy activities. The Even Start project lacked documentation demonstrating that all families were participating in all four instructional components. Project staff told the ED team that the local evaluator had this documentation, but they were unable to provide this documentation to the ED team at any time during the week the ED team was in California.

Citation: Section 1235(2) of ESEA requires families to participate fully in Even Start services. To participate fully, families must participate in all four core instructional components.

Further action required: The Even Start program in the San Francisco Independent School District at Hunter's Point has been designated as "code yellow," which is the CDE term for an at risk grantee. The State is in the process of following up on a number of compliance issues with this project, including addressing the requirement that all family members participate in all core instructional services. The CDE must continue to take action to ensure that the project is in compliance.

Indicator 2.7 – All instructional staff of the program hired after the enactment of the LIFT Act (December 21, 2000), whose salaries are paid in whole or in part with Even Start funds, meet the Even Start staff qualification requirements.

Finding: At four of the local projects visited (San Antonio, Lao Family Literacy, Washington Independent School District, and Elk Grove) instructional staff paid in whole or in part with Even Start funds, hired for the early childhood education component since December 21, 2000, did not have an associate's degree.

Citation: Section 1235(5) of ESEA requires that all Even Start instructional staff hired after December 21, 2000, have obtained at least an associate's degree in a field related to early childhood education, elementary or secondary school education, or adult education and, if applicable, meet the qualifications established by the State.

Further action required: CDE must ensure that instructional staff hired since the passage of the Literacy Involved Families Together Act (December 21, 2000) have at least an associate's degree and meet the qualifications established by the State.

Indicator 2.10 – By December 21, 2004, the person responsible for the administration of family literacy services has received training in the operation of a family literacy program.

Recommendation: Since some of the project directors of the Even Start projects visited have not yet received training in the operation of a family literacy program, and the December deadline is approaching, the CDE should develop policies about what training will meet the requirements of the statute, and ensure that local project staff have access to this training.

Indicator 2.13 – The local programs shall provide and monitor integrated instructional services to participating parents and children through home-based programs.

Finding: Project staff at the Even Start program in San Francisco ISD at Hunter's Point indicated that not all families were participating in the home instruction component of the

Even Start program. They were under the impression that provision of home-based instructional services was an “optional” part of the program.

Citation: Section 1235(7) of ESEA requires local Even Start projects to provide and monitor integrated instructional services to participating parents and children through home-based programs.

Further action required: The CDE must ensure that all local Even Start projects provide all participating families with home-based instructional services in addition to the center-based instructional services provided to families.

Indicators 2.16 and 2.18: The local programs shall use instructional programs based on scientifically based reading research for children and adults and reading-readiness activities for preschool children based on scientifically based reading research.

Finding: Some local project staff did not know how to apply the definition of scientifically based reading research in order to ensure that instructional programs were based on approaches meeting this definition. This was especially true of the early childhood education component of the Even Start projects. Some project staff had not developed or adopted a coherent instructional approach for this component and did not have a curriculum or other defined scope and sequence of content and skills to be taught. Some projects were also operating the early childhood education component in license-exempt facilities, which were inadequate for the purposes of providing high quality program services. Some early childhood classroom environments clearly were not organized using principles based on scientific research.

Citation: Section 1235(10) and (12) of ESEA requires local Even Start projects to use instructional services, including reading readiness activities, for preschool children on scientifically based reading research.

Further action required: The CDE must work with local Even Start projects and provide the needed technical assistance to ensure that project staff develop or adopt a sound and coherent program of instruction and ensure that instructional services, including reading-readiness activities for preschool children, are based on scientifically based reading research, including that early childhood classroom environments have adequate space and are adequately equipped and organized to provide high-quality early childhood education based on scientifically based reading research.

Indicator 2.17 – The local programs shall encourage participating families to attend regularly and to remain in the program a sufficient time to meet their program goals.

Finding: Some local Even Start project staff reported that they faced serious attendance and retention challenges. For example, at the San Antonio site in Oakland, staff indicated that only a very few families continued from one project year to the next. The Lao

Family Literacy project reported that both attendance and retention in the project had been "slipping."

Citation: Section 1235(11) of ESEA requires local project staff to encourage participating families to attend regularly and to remain in the program for a sufficient time to meet program goals.

Further action required: The CDE should work with project staff to develop and adopt promising policies and practices aimed at improving attendance and retention in the Even Start program.

Title I, Part B, Subpart 3 (Even Start) Monitoring Area 3: Fiduciary Responsibilities

Indicator 3.2 – The SEA ensures that subgrantees comply with statutory and regulatory requirements on uses of funds and matching.

Finding: At the San Antonio and Washington ISD Even Start projects, unallowable expenditures were included as part of the budget for the matching requirement for the program. Both programs listed indirect costs as part of the match even though indirect costs are unallowable under the Even Start program. The CDE Even Start application included budget forms allowing the use of funds for capital outlay for buildings, land and improvements. These expenditures are not allowable under the Even Start program.

Citation: Section 1234 of ESEA prohibits the use of funds for indirect costs and 34 CFR section 76.533 prohibits the use of funds for construction or the purchase of real property. Sections 74.23 and 80.34 of 34 CFR provide that any matching contributions must be allowable costs.

Further action required: The CDE must ensure that project staff do not charge indirect costs to the Even Start program either as a use of Even Start funds or as part of the program match. They should also remove the reference in the budget forms used by Even Start to the use of funds for capital outlay for sites, building, or site improvements.

Indicator 3.4. – The SEA ensures timely and meaningful consultation with private school officials on how to provide Even Start services and benefits to eligible elementary and secondary school students attending non-public schools and their teachers or other instructional personnel, and local programs provide an appropriate amount of those services and benefits through an eligible provider.

Finding: Staff at the San Antonio, Lao Family Literacy, Hunter's Point, Washington ISD, and Elk Grove Even Start projects were not consulting with private school officials or providing Even Start services to eligible Even Start families with school-age students attending non-public schools. Of the projects visited, only staff at the Washington ISD Even Start project were fully aware of the requirement and were providing the required consultation. The CDE guidance on the participation of private school children and the

State's complaint procedure did not include the Even Start program although the ED team was advised there were plans to do so.

Citation: Section 9501 of ESEA requires recipients of Federal Even Start funds to provide eligible school-age children who are enrolled in private elementary and secondary schools and their teachers or other educational personnel, educational services and benefits under Even Start on an equitable basis. Eligible entities must provide the equitable services after timely and meaningful consultation with the appropriate private school officials.

Further action required: The CDE must ensure that all local Even Start projects provide timely and meaningful consultation with private school officials regarding the participation of eligible most in need families with school-age students about their need for Even Start services, and provide a required amount of those services as needed and appropriate.

Indicator 3.5 – The SEA has a system for ensuring fair and prompt resolution of complaints and has proper hearing procedures.

Recommendation: The ED team was informed that the CDE is currently reviewing its complaint and hearing procedures for a number of federally funded programs, including the Even Start program, for legal sufficiency. During that process, the CDE should ensure that it is in compliance with the applicable hearing requirements in Section 432(a) of the General Education Provisions Act (GEPA), 20 U.S.C. 1231b-2(a), and the implementing regulations in 34 CFR 76.401(c) and (d)(2), for any adverse SEA actions to which those procedures apply. Those adverse actions include actions such as denials of new grant awards following a competition, non-continuation of existing awards for non-compliance issues, and suspension, withholding, and termination actions. In reviewing its Section 432 procedures, the SEA should consider and apply the decisions issued by this Department in the following cases involving the CDE (available upon request): *In re Owens Valley Career Development Center*, Decision (January 3, 2002); *In re Lancaster School District*, Decision (December 19, 2000); and *In re Clovis Unified School District*, Remand Order (July 10, 1995). The SEA also should ensure that it has in place additional hearing procedures for denial of continuation funding for insufficient progress on the State's indicators of program quality as required by Section 1238(b)(4) of the ESEA, 20 U.S.C. 6381g(b)(4).

Summary of Title I, Part D Monitoring Indicators

Neglected, Delinquent or At-Risk of Dropping-Out Program			
Element Number	Description	Status	Page
Critical Element ND1.1	The SEA has implemented all required components as identified in its Title I, Part D (N/D) plan.	Met Requirements	N/A
Critical Element ND1.2	The SEA ensures that State Agency (SA) plans for services to eligible N/D students meet all requirements.	Finding	30
Critical Element ND1.3	The SEA ensures that Local Education Agency (LEA) plans for services to eligible N/D students meet all requirements.	Met Requirements	N/A
Critical Element ND2.1	The SEA ensures that institutionwide programs developed by the SA under Subpart 1 use the flexibility provided to them by law to improve the academic achievement of all students in the school.	Met Requirements	N/A
Critical Element ND3.1	The SEA ensures each State agency has reserved not less than 15 percent and not more than 30 percent of the amount it receives under Subpart 1 for transition services.	Finding	30
Critical Element ND3.2	The SEA conducts monitoring of its subgrantees sufficient to ensure compliance with Title I, Part D program requirements.	Met Requirements Recommendation	31

Title I, Part D - Neglected, Delinquent or At-Risk of Dropping-Out Program

Indicator ND1.2 - The SEA ensures that State Agency (SA) plans for services to eligible N/D students meet all requirements.

Finding: Neither the California Youth Authority nor the Department of Corrections has designated an individual in each institution that is responsible for transition services, as is required. The Department of Corrections stated that it used a State-level committee to conduct these activities and the Youth Authority stated that it funded this position in the past through grants that are no longer available.

Citation: Section 1414(c)(11) of ESEA states that any State agency that desires to receive funds to carry out a program under this subpart shall submit an application to the State educational agency that designates an individual in each affected correctional facility or institution for neglected or delinquent children and youth to be responsible for issues relating to the transition of children and youth from such facility or institution to locally operated programs.

Further Action Required: ED requires the CDE to provide technical assistance to its State agency programs and require them to immediately identify an individual responsible for transition services in each institution receiving Title I, Part D, Subpart 1 funds. ED requires CDE to provide written documentation that such State Agencies have complied with this requirement.

Indicator 3.1 - The SEA ensures each State agency has reserved not less than 15 percent and not more than 30 percent of the amount it receives under Subpart 1 for transition services.

Finding: Neither the California Youth Authority nor the Department of Corrections has reserved the required 15 to 30 percent of Title I, Part D funds for transition services. The ED team found that the required reservation for transition services was vaguely identified in the State Agency Title I, Part D budgets.

Citation: Section 1418(a) of ESEA states that "each State agency shall reserve not less than 15 percent and not more than 30 percent of the amount such agency receives under this subpart for any fiscal year to support - (1) projects that facilitate the transition of children and youth from State-operated institutions to schools served by local educational agencies; or (2) the successful reentry of youth offenders, who are age 20 or younger and have received a secondary school diploma or its recognized equivalent, into postsecondary education, or vocational and technical training programs, through strategies designed to expose the youth to, and prepare the youth for, postsecondary education, or vocational and technical training programs, such as - (A) preplacement programs that allow adjudicated or incarcerated youth to audit or attend courses on college, university, or community college campuses, or through programs provided in institutional settings; (B) worksite schools, in which institutions of higher education and private or public employers partner to create programs to help students make a successful

transition to postsecondary education and employment; and (C) essential support services to ensure the success of the youth, such as —

(i) personal, vocational and technical, and academic, counseling; (ii) placement services designed to place the youth in a university, college, or junior college program; (iii) information concerning, and assistance in obtaining, available student financial aid; (iv) counseling services; and (v) job placement services.”

Further Action Required: The CDE must provide technical assistance to its State agencies to assist them with reserving Title I, Part D funds as required to ensure that transition activities as described in Section 1418(a) are provided.

Indicator ND 3.2 - The SEA conducts monitoring of its subgrantees sufficient to ensure compliance with Title I, Part D program requirements.

Recommendation: Since the CDE Title I, Part, D Coordinator is the only individual who conducts compliance reviews for the 113 programs funded under Title I, Part D Subparts 1 and 2, the ED team recommends that the CDE move beyond the use of site visits as their primary compliance review activity and employ a greater variety of methods to monitor this program at the State agency and LEA level. The ED team recommends that the CDE use site visits and desk monitoring combined with teleconference or WEB-enabled conference calls, as appropriate, to supplement site visits and ensure a greater degree of monitoring of the implementation of the Title I, Part D program.

Summary of McKinney-Vento Homeless Education Program Monitoring Indicators

McKinney-Vento Homeless Education Program			
Element Number	Description	Status	Page
Critical Element MV2.1	The SEA implements procedures to address the identification, enrollment and retention of homeless students.	Finding	33
Critical Element MV2.2	SEA provides, or provides for, technical assistance for LEAs to ensure appropriate implementation of the statute.	Met Requirements Recommendation	33
Critical Element MV3.1	The SEA ensures that LEA subgrant plans for services to eligible homeless students meet all requirements.	Finding	34
Critical Element MV3.2	The SEA ensures that the LEA complies with providing comparable Title I, Part A services to homeless students attending non-Title I schools.	Met Requirements Recommendation	35
Critical Element MV3.3	The SEA has a system for ensuring the prompt resolution of disputes.	Finding	35
Critical Element MV3.4	The SEA conducts monitoring of LEAs with and without subgrants, sufficient to ensure compliance with McKinney-Vento program requirements.	Met Requirements	N/A

McKinney-Vento Homeless Education Program

Indicator MV2.1 - The SEA implements procedures to address the identification, enrollment and retention of homeless students.

Finding: The ED team has determined that although 100% of the salaries of the CDE Homeless Coordinator and her assistant are charged to the State's McKinney-Vento Homeless program, staff in both positions spend 30% or more of their time working on activities that are not related to the McKinney-Vento program. Additionally, other activities not related to the homeless program have been charged to the McKinney-Vento grant.

Citation: Office of Management and Budget Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments, Section E states that Direct Costs are those that can be identified specifically with particular final cost objectives. The cost must be allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received. Compensation such as salary is allocable for employees for the time devoted and identified specifically to the performance of activities for grant awards.

Further Action Required: Cost Principles require that charges to Federal awards for salaries and wages, whether treated as direct or indirect costs, be based on payrolls documented in accordance with generally accepted practice of the governmental unit and approved by a responsible official(s) of the governmental unit. ED requests that the CDE provide it with documentation of the compensation of staff for 2003-04 in support of their McKinney-Vento Homeless Assistance grant. Additionally, ED requires that other selected items of cost charged by CDE in 2003-04 to the McKinney-Vento grant be documented to demonstrate that there are no unallowable costs. ED requires the CDE to assure that 2004-05 and subsequent yearly costs charged to the McKinney-Vento program are allocable under Federal cost principles.

Indicator MV2.2 - SEA provides, or provides for, technical assistance for LEAs to insure appropriate implementation of the statute.

Recommendation: The ED team recommends that the CDE's McKinney-Vento State Coordinator be provided with additional fiscal resources allowable under the conditions of the grant in order to 1) better serve LEAs with state-wide technical assistance and support; and 2) coordinate and collaborate with CDE homeless education efforts with those of other State agencies serving homeless families, children and youth, in compliance with grant requirements.

In 2003-04, \$2.1 million of McKinney-Vento funds were available to the CDE to use for State activities. However, the Homeless Education Coordinator responsible for implementing the statute's requirements was permitted to use approximately \$400,000 or 20% of these available funds for State activities. While it is permissible for the State to use available State activity funds for subgrants to LEAs, the ED team believes that the

Coordinator does not have sufficient funds to provide required state-wide technical assistance and guidance, since the State has over 1,000 LEAs and funds only 70 of them with subgrants.

The duties of a Coordinator are extensive and include: (1) gathering reliable, valid, and comprehensive information on the nature and extent of the problems homeless children and youth have in gaining access to public preschool programs and to public elementary schools and secondary schools, the difficulties in identifying the special needs of such children and youths, any progress made by the SEA and LEAs in addressing such problems and difficulties, and the success of the programs under this subtitle in allowing homeless children and youths to enroll in, attend, and succeed in, school; (2) developing and carrying out the State plan; (3) collecting and transmitting to ED a report containing such information ED determines is necessary to assess the educational needs of homeless children and youths within the State; (4) facilitating coordination between the SEA, State social services agencies, and other agencies (including agencies providing mental health services) to provide services to homeless children, including preschool-aged homeless children, and youths, and to families of such children and youths; (5) coordinating and collaborating with— (A) educators, including child development and preschool program personnel; (B) providers of services to homeless and runaway children and youths and homeless families (including domestic violence agencies, shelter operators, transitional housing facilities, runaway and homeless youth centers, and transitional living programs for homeless youths); (C) LEA liaisons for homeless children and youths required by the Act; and (D) community organizations and groups representing homeless children and youths and their families; and (6) providing technical assistance to LEAs in coordination with their LEA liaison to ensure that LEAs comply with requirements in order to improve the provision of comprehensive education and related services to homeless children and youths and their families.

The ED team recommends that the CDE's McKinney-Vento State Coordinator be provided with sufficient funding and resources to address these needs and implement these varied and extensive requirements.

Indicator MV3.1 - The SEA ensures that LEA subgrant plans for services to eligible homeless students meet all requirements.

Finding: The CDE does not provide funds available through the McKinney-Vento Homeless Education Act to its LEAs in a timely way, nor does it permit its LEAs to carry over unexpended funds as allowable.

Although these funds were made available to the CDE on July 1, LEA subgrantees did not receive them until the fall in both FY2003 and FY2004. ED recognizes that the CDE must have budget approval from the State before making any subgrant awards, which could explain this delay; however, the CDE also requires its LEAs to obligate these funds by May of each year and return all unexpended funds to the CDE at the end of the fiscal year. By requiring LEAs with multi-year subgrants to annually return all unspent funds, the CDE is incorrectly applying principles for allowable carryover of funds, jeopardizing

the timely and effective implementation of LEA subgrants, and preventing its LEAs from having enough resources to annually initiate and complete subgrant requirements.

Citation: Section 723(c) of ESEA states that "the State educational agency shall, in accordance with the requirements of this subtitle and from amounts made available to it under section 726, make competitive subgrants to local educational agencies that submit applications under subsection (b)."

The Tydings Amendment, as incorporated in the General Education Provisions Act, Section 1225(b) of ESEA, provides that certain Federal funds not obligated during the first year of allotment shall remain available for obligation and expenditure during the succeeding year and for up to 27 months. Since the Federal fiscal year begins October 1st and the California State fiscal year July 1st, the grant period for the McKinney-Vento award for both the State and its subgrantees can be active up to 27 months, as applicable.

Further Action Required: ED requires documentation that LEAs are provided with subgrant funding in a timely manner, that the funding is available throughout the school year, and that carryover of funds is permitted to allow LEAs with multi-year subgrant awards to have sufficient funding at the start and end of each grant year.

Indicator MV3.2 - The SEA ensures that the LEA complies with providing comparable Title I, Part A services to homeless students attending non-Title I schools.

Recommendation: The ED team observed that there is minimal CDE guidance on the reservation of Title I, Part A funds to provide services for homeless children who do not attend participating schools, including providing educationally related support services to children in shelters and other locations where children may live, as required under Title I, Part A Section 1113(c) (3)(A).

In the LEAs visited, the ED team found that the required LEA reservations are not well understood, because consolidated applications are school-specific and not LEA-specific. LEA liaisons were unsure if and how Part A funds are reserved to assist homeless students, as appropriate. The ED team recommends that the CDE review ED's McKinney-Vento program guidance issued in July 2004 to determine what steps it can take to help LEAs better understand their responsibilities regarding reserving Title I, Part A funds for homeless students. The ED team also recommends that the CDE develop its own guidance to help its LEAs comply with these requirements.

Indicator MV3.3 - The SEA has a system for ensuring the prompt resolution of disputes.

Finding: The CDE does not have a written enrollment dispute resolution policy as required by the McKinney-Vento Homeless Education Act as a condition of receiving State funds. The ED team observed that LEAs visited also did not have written dispute

resolution policies, nor were written explanations of schools' decisions regarding school selection or enrollment of homeless students provided to parents.

Citation: Section 722(g)(C) of ESEA states that a State Plan shall include a description of procedures for the prompt resolution of disputes regarding the educational placement of homeless children and youths. Section 722 (g)(3)(E) further stipulates that if a dispute arises over school selection or enrollment in a school, the child or youth shall be immediately admitted to the school in which enrollment is sought, pending resolution of the dispute. Additionally, the parent or guardian of the child or youth shall be provided with a written explanation of the school's decision regarding school selection or enrollment, including the rights of the parent, guardian, or youth to appeal the decision.

Further Action Required: ED requires the CDE to immediately develop and circulate a policy for the prompt resolution of enrollment disputes regarding the educational placement of homeless children and youths. ED further requires the CDE to provide evidence that it has informed its LEAs about their responsibilities both to resolve enrollment disputes and to provide written notifications of dispute results to parents, guardians and unaccompanied youth.



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

THE ASSISTANT SECRETARY

January 19, 2005

Dear Chief State School Officer:

I want to thank you for sending your colleagues to the Department's training session on November 8, 2004, regarding the requirements for standards and assessments under the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001 (NCLB). I trust the meeting was informative for those in your State who are developing standards and assessment systems.

One important piece of information that was delivered at this session was the possible outcomes from a peer review of a State's standards and assessment systems. I want to ensure you are aware of the Department's plans as we undertake this important step in implementing NCLB. As you know, under section 1111(e) of NCLB, the Department is required to peer review and approve each State plan, including evidence of how the State has met the NCLB standards and assessments requirements. Depending upon the results of the peer review, a State's system of standards and assessments would receive one of the following:

- *Full Approval.* *Full Approval* will be granted if a State's standards and assessment system meets *all* statutory and regulatory requirements. No additional action is required.
- *Full Approval with Recommendations.* *Full Approval with Recommendations* will be granted if a State's standards and assessment system meets *all* statutory and regulatory requirements, but some pieces of the system could be improved. In this case, we will approve the State's standards and assessment system but will recommend additional actions that the State may wish to take to improve pieces of its system.
- *Deferred Approval.* *Deferred Approval* will be granted if a State's standards and assessment system meets *most, but not all*, of the statutory and regulatory requirements. In this case, the State must take specific steps (such as producing a technical manual or taking board action) to come into full compliance and submit evidence of that compliance. To receive *Deferred Approval*, a State must be able to fully implement its standards and assessment system in the 2005-2006 school year. For States that participate in an early review, we may also grant *Deferred Approval* status in cases where:
 - Nearly all requirements have been met;

- The State can clearly articulate how it will meet remaining requirements; and
 - The State can achieve compliance and administer final assessments by Spring 2005-2006.
- *Final Review Pending.* This is the status of a State that seeks an early review but whose standards and assessment system does not meet a preponderance of the statutory and regulatory requirements. In this instance, the State would have time to resubmit evidence by the 2005-2006 administration to show that its system meets those requirements, pending the outcome of an additional peer review.
 - *Not Approved System.* A *Not Approved System* is one that does not meet a preponderance of the statutory and regulatory requirements or is missing an essential component. In such cases, one or more of the following remedies will be applied:
 - *Withholding State Funds.* Section 1111(g)(2) authorizes the Secretary to withhold State administrative funds until he determines a State's standards and assessment system meets the Title I requirements. This remedy could be used alone or in conjunction with either *Mandatory Oversight Status* or a *Compliance Agreement*.
 - *Compliance Agreement.* A *Compliance Agreement* is a statutory remedy authorized by §457 of the General Education Provisions Act. Its purpose is to bring a State into full compliance with applicable requirements as soon as feasible. A *Compliance Agreement* is jointly negotiated between the State and the Department. Full compliance must be achieved within three years.
 - *Mandatory Oversight Status.* This status could be conferred on a State whose standards and assessment system does not meet the requirements by 2005-2006 but can be revised to meet the requirements within the 2006-2007 school year. This remedy would place specific conditions on a State's grant award, such as requiring additional and more detailed reports or imposing other conditions related to the State's authority to draw down its Title I funds. In imposing such conditions, we will notify the State in writing regarding the reasons for the conditions and the steps that must be taken before they will be removed.

Please note that no timeline waivers will be granted with respect to the NCLB standards and assessment requirements.

Further, if a State's standards and assessment system does not have *Full Approval* or *Full Approval with Recommendations* by July 1, 2006, we will place conditions on the receipt of fiscal year 2006 Title I funding. These conditions will continue until *Full Approval* or *Full Approval with Recommendations* is attained.

There will be several opportunities for your State to submit evidence of its standards and assessment system for peer review. The first review will occur February 2005.

Subsequent reviews will occur during May, September and November 2005 and during February, May and September during 2006.

Please contact members of my staff, Dr. Kerri Briggs (202-401-0113) or Dr. Zollie Stevenson, Jr. (202-260-1824) if you have any specific questions regarding the plans or process for peer review.

Sincerely,

/S/

Raymond Simon

cc: Governors
State Assessment Directors

**CALIFORNIA DEPARTMENT OF EDUCATION**

JACK O'CONNELL, State Superintendent of Public Instruction
(916) 319-0800

**CALIFORNIA STATE BOARD OF EDUCATION**

RUTH E. GREEN, President
(916) 319-0827

December 9, 2004

Ray Simon, Assistant Secretary
Office of Secondary and Elementary Education
United States Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Assistant Secretary Simon:

Pursuant to Public Law 107-110, Part D – Waivers, Section 9401(a), the California Department of Education (CDE) and State Board of Education (SBE) request a partial waiver from the following requirements of the *No Child Left Behind* (NCLB) Act:

- Title I, Section 1111(b)(7), "Each state plan shall demonstrate that local educational agencies in the State will, beginning no later than school year 2002-2003, provide for an annual assessment of English proficiency (measuring oral language, reading, and writing skills in English) of all students with limited English proficiency in the schools served by the State educational agency ..."
- Title III, Section 3121(d), "A State shall approve evaluation measures for use under subsection (c) that are designed to assess – the progress of children in attaining English proficiency, including a child's level of comprehension, speaking, listening, reading, and writing skills in English."

The CDE's "Consolidated State Application, September 1, 2003 Submission" (pages 7-8) indicated that students in kindergarten and first grade are currently assessed only in listening and speaking. A timeline was provided for California English Language Development Test (CELDT) modifications (adding reading and writing tests to kindergarten and first grade) for compliance with NCLB. The CDE now wishes to amend the plan, retract the timeline, and request a waiver for testing English proficiency in reading and writing in kindergarten and first grade.

The CDE's English proficiency evaluation measure, the CELDT, assesses listening, speaking, and comprehension skills in kindergarten through twelfth grade, and assesses reading and writing skills in grades two through twelve. (The assessment of

comprehension is derived from the assessment of listening in kindergarten and first grade, and from listening and reading in second through twelfth grade.) The CDE requests a waiver of the requirement to assess reading and writing skills in kindergarten and first grade.

Waiving this requirement will improve the quality of instruction and academic achievement for students in kindergarten and first grade. For students in these grades reading and writing skills are relatively undeveloped and the constructs, as related to language proficiency, are difficult to assess. Currently, the CDE's other assessment programs do not apply to these grades. Reading and writing tests for very young children are difficult to design and administer. The one-on-one administration of reading and writing tests, essential in view of the young age and lack of testing experience of young children, will be very intrusive to instructional time and will significantly increase the burden and expense of administering the CELDT. Instruction, not testing, is a more productive use for these resources. The information obtained from an attempt to assess reading and writing skills of these students may well not meet commonly accepted professional technical standards for reliability and validity. Such information would not be useful, and might be detrimental to instruction and academic achievement.

The educational goal affected by this waiver is improvement in English language proficiency and academic achievement. While students would not be assessed for reading and writing English proficiency, students certainly would continue to be taught appropriate reading and writing skills for English proficiency in accordance with our English Language Development standards. The CDE will continue to assess students in kindergarten and first grade with the listening and speaking parts of the CELDT and will continue to use these results to monitor improvement in English language proficiency. Over the last three testing cycles using the CELDT, we have observed an average of a four to seven percent increase in the number of kindergartners and first grade students who met the CELDT criteria for possible reclassification to fluent English proficient. We would continue to expect this rate of yearly improvement.

The waiver will assist CDE and local educational agencies (LEAs) in attaining these goals as follows: (1) focus more state and local resources on instruction, not testing; (2) focus more attention on the more reliable and valid results of the listening and speaking tests; and (3) avoid increasing the burden of testing and administrative costs to LEAs.

Pursuant to Public Law 107-110, Part D – Waivers, Section 9041(b)(3)(A), the California Department of Education provided all interested LEAs in the State and the public with notice and a reasonable opportunity to comment on the request through the SBE meeting. The waiver was initially discussed as an information-only item in September

Ray Simon
December 9, 2004
Page 3

during its regular *No Child Left Behind* (NCLB) *Act of 2001-Update*. At the September 8, 2004, meeting, the State Board agreed, by consensus, to direct Board staff to prepare for the November Board meeting an NCLB waiver to relieve California from testing kindergarten and first grade English learners for English language proficiency in reading and writing. The November agenda was publicly posted ten days prior to the State Board's November 9, 2004, meeting. All items discussed at the SBE have opportunity for public comment. To date, one verbal comment has been received. The comment has stated support for the waiver. A transcription of the comment is attached for your review.

Thank you for consideration of our request. We look forward to receiving your written response. If you or your staff have any questions, please contact Deb Sigman, Director, Standards and Assessment, California Department of Education, at (916) 445-9441 or Mark Fetler, Manager, California English Language Development Test and Psychometrics Office, California Department of Education, at (916) 319-0562.

Sincerely,


JACK O'CONNELL
State Superintendent of Public Instruction


RUTH E. GREEN, President
State Board of Education

JO/RG:mf
Attachment

Transcription of Verbal Comment received at the State Board of Education (SBE) Meeting, November 9, 2004, in response to SBE Item #12.

Afternoon, President Green, Superintendent O'Connell, the Members of the Board. I'm Don Bridge, just singular, not plural, as I tell my students. In the California Teachers Association we support this request for the waiver to waive the reading and writing assessments in kindergarten and first grade. And as mentioned earlier, the one thing that we're saying in the letter we like is that it will improve the quality of instruction and... because it'll ... the testing is very intrusive to the instructional time and we appreciate that being in there. One question that I want to ask Mr. Fisher is about the fact what happens if it is rejected. In the letter it says, "We look forward to receiving a response." How is that response going to come? Is it going to come in a phone call, in a written response, or should that be specified in the letter because we'd like to see a written response from the Department of Education.

Thank you.



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

THE ASSISTANT SECRETARY

APR 11 2005

RECEIVED
STATE BOARD OF EDUCATION
05 APR 11 PM 1:39

The Honorable Ruth E. Green
President
California State Board of Education
1430 N Street, Suite 5111
Sacramento, CA 95814

The Honorable Jack O'Connell
Superintendent of Public Instruction
California Department of Education
P. O. Box 944272
Sacramento, CA 94244-2720

Dear President Green and Superintendent O'Connell:

This is in response to your letter of December 9, 2004 in which you request a partial waiver of the requirement under the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001 (NCLB), to annually assess the English language proficiency of all English language learners in grades K-12 in the domains of reading, writing, listening and speaking. You specifically requested a waiver of the requirement to annually assess the reading and writing skills of English language learners in kindergarten and first grade.

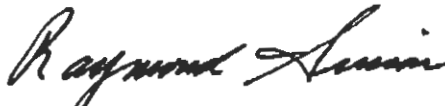
Both Title I and Title III require the annual assessment of English language proficiency. Section 1111(b)(7) of Title I requires that "[e]ach State plan shall demonstrate that local educational agencies in the State will, beginning not later than school year 2002-2003, provide for an annual assessment of English proficiency of all students with limited English proficiency in the schools served by the State." Title III describes the evaluation criteria States must use. Specifically, Section 3121(d)(1) provides that "a State shall approve evaluation measures...that are designed to assess the progress of children in attaining English proficiency, including a child's level of comprehension, speaking, listening, reading and writing skills in English". This evaluation, as required by the statute, is necessary to promote the English language acquisition and academic achievement of English language learners at all grade levels. Therefore, we cannot grant your request for a waiver from the requirement to assess English language learners in grades K-1 in reading and writing.

We recognize, of course, that testing young students may present some challenges. To help with the challenges, we have enclosed a guidance document that may offer some support and technical assistance in your continuing efforts to meet the language acquisition and academic needs of English language learners in grades K-1.

We understand that California is still developing its integrated system of English language proficiency standards and assessments. Some States have joined consortia funded by the Department to develop collaboratively assessments for young English language learners. California may wish to contact these consortia to gain their insights and share developments on this important issue. Some consortia are specifically developing English language proficiency assessments for K-2 students that respond to NCLB requirements.

We look forward to working with you in meeting the English language proficiency assessment requirements under NCLB. If you have any questions, please contact Kathleen Leos, Associate Assistant Deputy Secretary, Office of English Language Acquisition (OELA), or Zollie Stevenson, Group Leader, Standards and Assessment Team, Office of Elementary and Secondary Education (OESE).

Sincerely,

A handwritten signature in black ink, appearing to read "Raymond Simon", written in a cursive style.

Raymond Simon

Enclosure

cc: Governor Arnold Schwarzenegger

Questions and Answers Regarding the Inclusion of Limited English Proficient Students, Grades K-2, in English Language Proficiency Assessments and in Title III Annual Measurable Achievement Objectives

Both Titles I and III of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act (Sections 1111(b)(7) and 3113(b)(3)(D)), require State and local educational agencies to assess annually the English language proficiency of all limited English proficient (LEP) students in the domains of listening, speaking, reading, and writing. This requirement is further emphasized in the assurances included in the Consolidated State Application, which was adopted by all States, and in the Final Non-Regulatory Guidance on the Title III State Formula Grant Program-Standards, Assessments, and Accountability, which was provided to all State educational agencies.

While the selection of English language proficiency assessments is a State decision, the selected assessments need to produce valid and reliable data to answer two questions: Is the student proficient in listening, speaking, reading, and writing in English? If not, is the student making progress in attaining English proficiency? The following questions and answers provide information regarding how States can meet the English language proficiency assessment requirement under ESEA.

1. What is the rationale for including LEP students in grades K-2 in English language proficiency assessments?

The assessment of LEP students' English language proficiency in the early grades is essential in determining their level of English language proficiency and in tailoring educational programs to meet students' individual needs. English language proficiency assessment allows educators to set students' baseline of proficiency upon enrollment, which allows their individual progress in English language acquisition to be monitored over time. Often, LEP students enter kindergarten with varied differences in their levels of English language proficiency across the domains of reading, writing, listening, speaking and comprehension. These differences are embodied in the English language proficiency assessment results and give teachers and administrators the information needed to recommend an educational program appropriate to the child's language and academic needs. A successful educational foundation in the early years is critical to academic success in the later elementary grades, and fundamental to success in learning to read.

2. May States develop various types of assessments to assess the English language proficiency of LEP students in the four domains of language in grades K-2?

Yes, States have the flexibility to use several types of assessments to assess the English language proficiency of LEP students in grades K-2 in the four required domains of reading, writing, listening and speaking. States may select and implement assessments of their choice as long as they are developmentally appropriate, reliable, valid, and aligned to the State English language proficiency standards.

3. What kind of assessment may a State use to measure English language proficiency in grades K-2?

States may use a variety of assessments to measure the progress of LEP students. At this young age, English language learners can demonstrate proficiency on State English language proficiency standards in reading and writing by educators collecting work samples or recording structured observations of students' classroom performance over a period of time. The reading and writing assessment of English language proficiency of K-2 students need not be a group administered, paper-pencil test, or a single testing event.

4. Must States develop a separate assessment instrument to measure and report comprehension?

No, although Title III requires State and local education agencies to report a separate score for the domain of comprehension, a separate assessment instrument is not required for Title I and Title III. Comprehension may be demonstrated through reading and listening.

5. How can students in grades K-2 be included in Title III annual measurable achievement objectives (AMAOs)?

LEP students in grades K-2 must have their English language proficiency annually assessed, and their performance in all four domains must be included in determinations of whether or not States and LEAs meet the Title III annual measurable achievement objectives. Under Section 3122 of Title III of the ESEA, AMAOs are comprised of three parts: making progress in learning English, attaining English language proficiency, and making adequate yearly progress (AYP) as specified in Section 1111(b)(2)(of Title I of the ESEA.

States may elect to establish K-2 as a cohort and establish an AMAO target specifically for this cohort. This may make it easier to follow the progress of LEP students over time without the technical complexity of measuring growth when assessments change as students progress to the higher grade levels.

6. What resources are available to help States develop English language proficiency assessments?

The majority of States are developing English language proficiency assessments to meet the requirement to annually assess the English language proficiency of all LEP students in grades K-12 in the four domains of reading, writing, listening and speaking. States are participating in four consortia that have been funded under the Title VI Enhanced Assessment Grants Program. These consortia are: the Mountain West Assessment Consortium (MWAC), the CCSSO LEP-State Collaborative on Assessment and Student Standards (SCASS) Consortium, the Wisconsin-Illinois-Delaware-Arkansas (WIDA) consortium and the Pennsylvania Enhanced Assessment

Grant (PA EAG). Nearly 40 States participate in these consortia and could serve as resources in the development of English language proficiency assessments for LEP students in grades K-2.

7. When should States begin assessing students in grades K-2 for English language proficiency with tests that are aligned to both content standards and language proficiency standards?

States are expected to begin full administration of the newly aligned English language proficiency assessments for grades K-12 by spring of 2006.

PROOF OF SERVICE

Test Claim Name: Standardized Testing and Reporting (Reconsideration)
Test Claim Number: 04-RL-9723-01

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my address ins 1430 N Street, Suite 2213, Sacramento, CA 95814.

On June 9, 2005, I served the attached letter of the California Department of Education in said cause, by placing a true copy thereof: (1) to claimant enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 1430 N Street, Suite 2213, for Interagency Mail Service, addressed as follows:


A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

B-29
Legislative Analyst's Office
Attention: Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

A-15
Department of Finance
Education Unit
Attention: Jeannie Oropeza
915 L Street, 7th Floor
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the forgoing is true and correct, and that this declaration was executed on June 9, 2005 at Sacramento, California.



Donald E. Killmer
Education Fiscal Services Consultant